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THE CONTROL OF FOREIGN RELATIONS

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"A treaty entering the Senate is like a bull going into the arena; no one can say just how or when the final blow will fall—but one thing is certain—it will never leave the arena alive."[1] When John Hay put this in his diary he had been secretary of state for six years. During this period he had seen seventeen treaties borne from the Senate, lifeless or so mutilated by amendments that they could not survive. We can pardon the harassed secretary's earlier statement. "The fact that a treaty gives to this country a great, lasting advantage, seems to weigh nothing whatever in the minds of about half the Senators. Personal interest, personal spites, and a contingent chance of petty political advantage are the only motives that cut any ice at present."[2]

It is, however, with the objective aspect of Secretary Hay's statement that we are primarily concerned. Statesmen, as others, may occasionally express impatience, but if the practical function of the Senate in treaty making is that of the matador at a bull fight, there are more serious grounds for concern. If its duties resemble those of picadors or banderilleros, the matter is serious enough, and of its goading tactics we have early evi-

[1] Thayer, *The Life and Letters of John Hay*, II, p. 393.
[2] *Ibid.*, II, p. 274.

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dence. Thus, John Quincy Adams writes in his diary: "Mr. Crawford told twice over the story of President Washington's having at an early period of his Administration gone to the Senate with a project of a treaty to be negotiated, and been present at their deliberations upon it. They debated it and proposed alterations, so that when Washington left the Senate-chamber he said he would be damned if he ever went there again. And ever since that time treaties have been negotiated by the Executive *before* submitting them to the consideration of the Senate."[3] Let us not leave the incident without hearing the picador's side, as recorded in Senator Maclay's journal on August 21, 1789. "I cannot now be mistaken. The President wishes to tread on the necks of the Senate. . . . . He wishes us to see with the eyes and hear with the ears of his Secretary only. The Secretary to advance the premises, the President to draw the conclusions, and to bear down our deliberations with his personal authority and presence. Form only will be left to us."[4]

However, treaties have occasionally been rescued from senatorial banderilleros. President Roosevelt reveals the method in his autobiography. "The constitution did not explicitly give me power to bring about the necessary agreement with Santo Domingo. But the Constitution did not forbid my doing what I did. I put the agreement into effect, and I continued its execution for two years before the Senate acted: and I would have continued it until the end of my term, if necessary, without any action by Congress. But it was far preferable that there should be action by Congress, so that we might be proceeding under a treaty which was the law of the land and not merely by a direction of the Chief Executive which would lapse when that particular Executive left office. I therefore did my best to get the Senate to ratify what I had done. There was a good deal of difficulty about it. . . . . Enough Republicans were absent to prevent the securing of a two-thirds vote for the treaty, and the Senate adjourned without any action at all, and with the feeling of entire self satisfaction at having left the country in the position

[3] J. Q. Adams, *Memoirs*, VI, p. 427. As to the last sentence see notes 24 to 26.
[4] *Journal of William Maclay* (N. Y. 1890), p. 131.

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of assuming a responsibility and then failing to fulfil it. Apparently the Senators in question felt that in some way they had upheld their dignity. All that they had really done was to shirk their duty. Somebody had to do that duty, and accordingly I did it. I went ahead and administered the proposed treaty anyhow, considering it as a simple agreement on the part of the Executive which would be converted into a treaty whenever the Senate acted. After a couple of years the Senate did act, having previously made some utterly unimportant changes which I ratified and persuaded Santo Domingo to ratify."[5]

Such incidents suggest that our recent difficulties are not wholly due to personalities. Institutions must be partly to blame. Indeed, Viscount Grey, in his letter to the *Times* of January 31, 1920, said that the American Constitution "not only makes possible, but under certain conditions renders inevitable conflict between the executive and the legislature."

American commentators have noticed this situation. Frequently they have urged reform, usually in the direction of the British cabinet system, but their attention has been centered upon domestic affairs. It is an extraordinary fact, that with respect to the control of foreign affairs, the reverse is true; British writers have looked hopefully to the United States as a model for reform. Thus, in his *American Commonwealth*, Lord Bryce says: "The day may come when in England the question of limiting the present all but unlimited discretion of the executive in foreign affairs will have to be dealt with, and the example of the American Senate will then deserve and receive careful study."[6] This opinion has been acted upon, and features of the American system have been endorsed by the British Union for Democratic Control of Foreign Relations founded in 1914.[7] More recently British reformers have doubtless looked elsewhere for models.

[5] Roosevelt, *Autobiography*, pp. 551–552.

[6] Bryce, *The American Commonwealth* (2nd ed.), I, p. 104.

[7] "The Morrow of the War," first pamphlet issued by the Union of Democratic Control, 1914, printed in Ponsonby, *Democracy and Diplomacy* (London, 1915), p. 21.

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Is our system for conducting foreign relations in need of revision? What is our system? What are the essentials of a satisfactory system for controlling foreign relations? Can our system be made to conform more closely to that standard?

I

The constitutional fathers were convinced of Montesquieu's dogma of the separation of powers.[8] They distributed the powers of government among independent legislative, executive and judicial departments. Where should they place the foreign-relations power? Some wanted to give it to the President,[9] some to Congress.[10] They compromised, and gave the power to receive foreign ministers and to act as commander-in-chief of the army and navy to the President, the power to declare war to Congress, and the power to make treaties and to appoint foreign ministers to the President acting with the advice and consent of the Senate. The terms of the Constitution and the debates of the convention suggest that in foreign affairs the President is authorized to initiate and control relations, checked by the possibility of senatorial or congressional veto.

Constitutional terms, however, must be read in the light of subsequent practice. In the 130 years of our history, where has the control of foreign relations actually been lodged? Let us consider the acts involved under the headings: (1) recognition of international conditions; (2) treaty making; (3) war making.

(1) The recognition of new states or governments has been by the President.[11] Washington never doubted his constitutional authority to receive Citizen Genêt, thereby according status to

[8] Montesquieu, *L'Esprit des lois*, Vol. I, bk. XI, ch. 6.

[9] See remarks by Hamilton, Gouverneur Morris and Mercer in Farrand, *Records of the Federal Convention*, I, p. 292; II, pp. 104, 297. See also Hamilton, "Pacificus" letter, June 23, 1793, printed in Corwin, *The President's Control of Foreign Relations* (1917), p. 8.

[10] See remarks by James Wilson in Farrand, *op. cit.*, II, 538, and Madison, "Helvidius" letter in answer to "Pacificus" August 24, 1793, printed in Corwin, *op. cit.* p. 16.

[11] See Moore, *Digest of International Law*, I, pp. 243–244; Corwin, *op. cit.* p. 71; Willoughby, *Constitutional Law*, I, p. 461.

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the French revolutionary government of 1793.[12] When Roosevelt received the emissary of the embryo republic of Panama a hundred and ten years later no one could quesion his constitutional authority.[13] Congress had thought of accelerating the dissolution of the Spanish empire in South America by recognition of the new republic in 1818, but constitutional experts insisted that the power belonged to the President and Congress acquiesced.[14]

Recognition of the limits of American territory belongs normally to the treaty power, but the President alone has acquired small uninhabited islands by declaration.[15] The acquisition of Texas and Hawaii by joint resolution of Congress in 1845 and 1898 are the sole cases of legislative initiative in this matter, and commentators have had difficulty in locating the constitutional authority for these assumptions of power.[16]

When President Washington proclaimed neutrality on April 21, 1793, upon the outbreak of the French revolutionary wars, Jefferson and Madison thought that by thus recognizing peace, when the French alliance treaty of 1778 seemed to demand war, he had exceeded his constitutional powers. But this precedent, ably defended by Hamilton, has stood.[17] Presidents have repeatedly, on their own authority, recognized neutrality upon the outbreak of foreign war.[18]

[12] Moore, *Digest*, I, pp. 121–122; V, pp. 589–590.

[13] Richardson, *Messages and Papers of the Presidents*, X, p. 582; Moore, *Digest*, III, p. 55.

[14] J. Q. Adams, *Memoirs*, IV, pp. 205–206; Corwin, *op. cit.* p. 73.

[15] Guano islands have been acquired by the President under authority of an act of Congress (Jones vs. U. S., 137 U. S. 202 (1890), Moore, *Digest*, I, p. 558); Horseshoe Reef in Lake Erie was acquired by the President through executive agreement with Great Britain and Midway and Wake Islands in the Pacific have been annexed by the President as a result of discovery and occupation. Moore, *Digest*, I, pp. 554–555.

[16] The power of Congress to admit new states to the union has been used as a justification for annexation of Texas. This use of this clause, however, was not intended by the constitutional fathers (Willoughby, *op. cit.* pp. 325–338) and could hardly apply to Hawaii. See *ibid*, ch. 22.

[17] See "Pacificus" and "Helvidius" letters by Hamilton and Madison, called forth by this incident, printed in Corwin, *op. cit.* pp. 5–30 and also, Moore, *Digest*, V, pp. 591–592.

[18] The Divina Pastora, 4 Wheat. 52; Moore, *Digest*, I, pp. 164 *et seq.* and 247.

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So also with the recognition of peace following a war. The termination of war is normally a function of the treaty power. Though war may be begun by one party, it takes two to end it, unless, indeed, there is complete conquest and absorption of one belligerent as in the case of our Civil War.[19] However, the consent of the contesting states, necessary to end a war, need not be evidenced by express agreement. Tacit consent may be inferred from continued suspension of active hostilities, and in the United States the President has decided when that inference is proper, both in wars between two foreign states and in civil war within the United States. Thus in 1868, after the war between Spain and Chile had been suspended for two years, Secretary of State Seward informed the Spanish minister that the United States might be obliged to decide whether peace existed,[20] and on April 2 and August 20, 1866, President Johnson issued proclamations declaring the Civil War at an end in specified areas.[21] These were subsequently held by the Supreme Court formally to terminate the war.[22]

It has been proposed that Congress terminate the war with Germany and Austria by repeal of the war resolutions of April 6, and December 17, 1917.[23] In support of such a measure it has been argued that whatever Congress may make it may unmake. This, of course, neglects the distinction between general laws and acts or resolutions creating a status. Congress, in general, can not repeal resolutions of the latter character, of which those ad-

[19] "I have yet to learn that a war in which the belligerents, as was the case with the late civil war, are persistent and determined, can be said to have closed until peace is conclusively established, either by treaty when the war is foreign, or when civil by proclamation of the termination of hostilities on one side and the acceptance of such proclamation on the other. The surrender of the main armies of one of the belligerents does not of itself work such termination." Mr. Bayard, secretary of state, to Mr. Muruaga, Spanish minister, December 3, 1886, U. S. For. Rel., 1887, pp. 1015; Moore, *Digest*, VII, p. 337.

[20] Mr. Seward, secretary of state to Mr. Goñi, Spanish minister, July 22, 1868, *U. S. Diplomatic Correspondence*, 1868, Vol. II, pp. 32, 34; Moore, *Digest*, VII, p. 337.

[21] 14 stat. 811, 13 stat. 814.

[22] The Protector, 12 Wallace, 700.

[23] See note by C. P. Anderson, *American Journal International Law*, Vol. 14, p. 384. Text of the resolution, *ibid.*, p. 419, and legislative history, *ibid.*, p. 438.

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mitting new states to the union, or conferring citizenship upon nationals are examples. However, whatever might be the effect of such a resolution in municipal law, and doubtless the courts would follow it as the decision of a "political question," it clearly could have international effect, only so far as expressly or tacitly accepted by the enemy powers.

As we have seen, the President, rather than Congress is the usual authority for recognizing facts connected with foreign relations, and by analogy it would seem that reception of a diplomatic officer from a former enemy would be the proper constitutional method for recognizing that a war had terminated by mutual cessation of hostilities. Doubtless in so delicate a matter the President ought to gain the approval of Congress, before acting, as he has sometimes done in the recognition of new states. It is believed that a resolution, such as that proposed by Senator Knox, would, if signed by the President or passed over his veto, terminate the war so far as domestic law is concerned, but under international law, it would not be effective, until the President, acting under it, had performed some formal act, evidencing mutual consent by the two governments, such as the reception of a diplomatic officer from the former enemy.

(2) The power to make treaties belongs to the President acting with the advice and consent of two-thirds of the Senate, but since Washington's administration the President has seldom sought the advice of the Senate prior to or during negotiations. He has negotiated and signed treaties independently and submitted the completed work to the Senate for consent to ratification.[24] In 1830 President Jackson sought the advice of the Senate on an Indian treaty prior to signature, but in doing so apologized "for departing from a long and for many years an unbroken usage in similar cases," a departure he thought justified by distinctive considerations applicable to Indian treaties.[25] In only ten later cases has such prior advice been sought, though informal

[24] Crandall, *Treaties, their Making and Enforcement* (N. Y., 1916), p. 70; Willoughby, *op. cit.* p. 458.

[25] Richardson, *op. cit.* Vol. II, p. 478.

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conferences with individual senators or with the Senate committee on foreign relations have been frequent.[26]

The Senate under the Constitution must give its advice and consent to the appointment of officers of the United States and has asserted that all persons authorized to negotiate treaties are thus included. However, the President has often negotiated treaties in person or through agents appointed by himself alone. The practice began with Washington's commission to John Paul Jones to treat with Algiers; was followed in Nicholas Trist's mission, resulting in the treaty of Guadaloupe Hidalgo ending the Mexican war; in Perry's famous mission to Japan in 1852; in the missions which concluded the treaty of peace with Spain in 1898; the Hague Conventions of 1899 and 1907; and the Algeciras General Act of 1906. A Senate report of 1887 stated that 438 special agents had been appointed by the President without consent of the Senate, and the majority report of the Senate in 1893, upon Blount's mission to Hawaii, stated: "Precedents show that the Senate of the United States, though in session, need not be consulted as to the appointment of such agents."[27]

The Senate may, however, refuse consent to ratification of treaties as it has done in 17 of about 650 negotiated treaties.[28] Among the more important treaties thus vetoed may be mentioned commercial and reciprocity treaties with Switzerland, 1835; with the German Zollverein, 1844; with Great Britain for Canada in settlement of the fisheries question, 1888; and the Kasson reciprocity treaties of 1899; annexation treaties with Texas, 1844; Hawaii, 1855; San Domingo, 1869; and Denmark for the Virgin Islands, 1868; arbitration and claims treaties including the Johnson-Clarendon treaty for settlement of the Alabama claims, 1868; and the Olney-Pauncefote general arbitration treaty with Great Britain, 1897. It is to be noticed that in most

[26] Lodge, "The Treaty-making Power," *Scribner's*, January 1902; Crandall, *op. cit.* pp. 70–72.

[27] Sen. Doc. No. 231, 56th Cong., 2nd Sess., viii, 332 *et seq.;* Sen. Rep. No. 227, 53rd Cong., 2nd sess., p. xxv; Corwin, *op. cit.* p. 64; Crandall, *op. cit.* p. 77; Moore, *Digest*, IV, 452–457; Foster, *The Practice of Diplomacy*, pp. 199–203; *American Political Science Review*, Vol. 10, p. 481 (1916).

[28] Crandall, *op. cit.* p. 82.

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of these cases, the end sought was eventually achieved, though in the matter of annexing Hawaii and the Virgin Islands, and in the settlement of the Canadian fisheries question, not until many years later.

The Senate's right to qualify its consent to ratification by reservations, amendments and interpretations was established through a reservation to the Jay treaty of 1794 and has been exercised in about seventy cases.[29] In fifteen of these the President has objected to the Senate conditions and refused to ratify.[30] Among the number may be mentioned the Roosevelt and Taft arbitration treaties of 1904 and 1911. There seems to be no doubt but that the final act of ratification belongs to the President, and he may withdraw a treaty from the Senate at any time or refuse to ratify even after the Senate has consented to the treaty without qualification.[31] The other party to the treaty may refuse to accept Senate amendments or reservations in which case the treaty fails.[32] Thus, in 1803, after Senate alteration, Great Britain rejected a boundary settlement treaty; in 1824, a slave trade convention; and in 1900, the first Hay-Pauncefote Canal treaty.

The claim, occasionally asserted by the House of Representatives, of a right to participate in treaty making has not been sustained in practice. It is true that action by Congress may be necessary to execute a treaty, as when an appropriation is necessary; but in such a case, as President Washington explained in his message on the Jay treaty in 1796, Congress is under a moral obligation to act.[33]

[29] Lodge, *op. cit.*; Crandall, *op. cit.* pp. 79–81.

[30] Crandall, *op. cit.* p. 97–99; Taft, *Our Chief Magistrate and his Powers*, p. 106.

[31] Shepherd vs. Insurance Co., 40 Fed. 341, 347; Willoughby, *op. cit.* p. 466; Crandall, *op. cit.* pp. 81, 94, 97; Taft, *op. cit.* p. 106; Black, *Handbook of American Constitutional Law*, p. 124; Foster, *op. cit.* p. 274; Senator Spooner, quoted in Corwin, *op. cit.* p. 175.

[32] Moore, *Digest*, III, p. 212, V, pp. 199–201; Willoughby, *op. cit.* p. 464.

[33] Richardson, *op. cit.* I, p. 195; Moore, *Digest*, V, p. 225; Dana, note to Wheaton, *International Law*, sec. 543, note 250; Willoughby, *op. cit.* pp. 515–517. See also Roosevelt, "Message on Cuban reciprocity treaty," Richardson, *op. cit.* X, p. 561; Wright, "Treaties and the Constitutional Separation of Powers in the United States," *American Journal International Law*, Vol. 12, p. 82 (Jan. 1918).

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Though formal treaties must gain the positive consent of the Senate, less formal agreements may be made by the President alone.[34] Of this character were the preliminary peace protocol with Spain of 1898, the Boxer indemnity agreement of 1900, the executive agreement under which President Roosevelt authorized the administration of San Domingan customs houses in 1904, and the preliminaries of peace and the armistice with Germany of November 5 and 11, 1918. Commitments to permanent policies have also been made under the sole authority of the President. Such were the exchanges of notes establishing the Hay open door policy in 1900, the Root-Takahira and Lansing-Ishii agreements for a far eastern policy in 1908 and 1917.

The termination of a treaty is normally a subject for negotiation between the signatory powers and is brought about by conclusion of a new treaty. Treaties, however, often provide for denunciation by one party on giving reasonable notice, usually one year. The question has arisen as to what authority in the United States may give this notice. A Senate report in 1856[35] held the treaty-making power competent, and denunciation of the Danish treaty was authorized in that year by the President acting with the Senate. President Taft however, denounced the Russian treaty of 1832 in 1911 on his own responsibility,[36] and on other occasions denunciation has been authorized by act of Congress. In 1879 President Hayes vetoed a resolution directing him to modify the Burlingame treaty with China, distinguishing such action from a denunciation of the treaty according to its own terms. "The power of modifying an existing treaty," he said, "whether by adding or striking out provisions, is a part of the treaty-making power under the Constitution, and its exercise is not competent for Congress."[37] President Wilson, simi-

[34] Willoughby, *op. cit.* pp. 467–479; Crandall, *op. cit.* pp. 102–117; Moore, *Digest*, V, 210–218; *Political Science Quarterly*, Vol. 20, p. 385 (1905).

[35] Sen. Rep. No. 97, 34th Cong., 1st sess.

[36] Taft, *op. cit.* p. 117; Crandall, *op. cit.* p. 462; Willoughby, *op. cit.* p. 518.

[37] Richardson, *op. cit.* VII, p. 519; Crandall, *op. cit.* p. 461. President Lincoln refused to carry out a resolution of Congress of February 9, 1865, which he himself had signed, which "adopted and ratified" notice already given for termination of the Great Lakes disarmament treaty of 1817. He withdrew the

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larly, has refused to act in accordance with a provision of the Jones Merchant Marine Act of June 5, 1920, directing him to terminate treaty clauses which would prevent discrimination in favor of American vessels.

In spite of the incapacity of Congress to direct the President in the modification of treaties, Congress may impair or annul treaties by acts or resolutions which are effective as municipal law, though they do not relieve the United States of International responsibility. Thus the Chinese exclusion act of 1888 was held valid by the Supreme Court although it conflicted with certain treaty provisions,[38] and a resolution of 1798 was held to terminate the existing French treaties.[39] The doctrine of constitutional law has been that treaties and acts of Congress are equally the "supreme law of the land" and in case of conflict the more recent prevails.[40] Under international law, however, the obligation of a treaty continues until the instrument is terminated by mutual consent or denounced as provided in its own terms.[41]

Practice seems to sanction independent initial negotiation and denunciation of treaties by the President. The power of the Senate is confined to a qualified or unqualified veto of formal treaties; and that of Congress is limited to their impairment or termination as municipal law.

(3) The power to declare war is vested in Congress, but the President may so conduct negotiations as to make war inevitable, as did President Polk in 1846. He may, as commander-in-chief of the army and navy, and in pursuance of his duty "to take care that the laws be faithfully executed," employ forces abroad to protect the rights of American citizens, as was done by President Pierce in the case of Martin Koszta, 1856, and by President

notice and the disarmament treaty remained and still remains in force. House Doc. No. 471, 56th Cong., 1st. Sess., pp. 32–34; Crandall, *op. cit.* p. 462. Although the President is ordinarily under a constitutional obligation to carry out all acts and resolutions of Congress passed by proper constitutional process, this is not true of those directing him in foreign affairs. Crandall, *op. cit.* p. 74.

[38] Chinese Exclusion cases, 130 U. S. 581 (1889). See also Moore, *Digest*, V, pp. 364–370.

[39] Moore, *Digest*, pp. 356–359.

[40] Willoughby, *op. cit.* pp. 484–488.

[41] *Ibid.* pp. 513–515.

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McKinley in the Boxer rebellion of 1900.[42] He may also employ the forces to execute treaties, as was done by President Roosevelt in restoring order in Cuba in 1906 as required by the Cuban treaty of 1903,[43] and for defense. Thus Jefferson, the man of peace, opened his administration by a defensive war against Tripoli which was not sanctioned by Congress until after the principal engagement.[44]

The President makes war subject to congressional approval. He decides independently when it is proper to employ the forces in measures short of war, subject always to the power of Congress to withhold supplies. He terminates war, subject, unless there is complete conquest, or protracted suspension of hostilities, to approval by two-thirds of the Senate.[45]

In 1906, Democratic senators, led by Senator Bacon of Georgia, disapproved of President Roosevelt's participation, without consulting the Senate, in the Algeciras conference on Morocco. "The Constitution," said Senator Spooner of Wisconsin, defending the President, "vests the power of negotiation and the various phases—and they are multifarious—of the conduct of foreign relations exclusively in the President. And . . . . . he does not exercise that constitutional power, nor can he be made to do it, under the tutelage or guardianship of the Senate or of the House or of the Senate and House combined."[46] Presidents themselves have displayed no less jealousy in guarding their prerogative in foreign negotiations. "Sympathizing as I do," wrote President Grant as he vetoed a congressional resolution in response to Argentinian congratulations upon our centennial exposition, "in the spirit of courtesy and friendly recognition which has prompted the passage of these resolutions, I cannot escape the conviction that their adoption has inadvertently

[42] In re Neagle, 135 U. S. 1 (1890); Wright, *American Journal International Law*, Vol. 12, pp. 77; Moore, *Digest*, VII, p. 112 *et seq.*, Borchard, *Diplomatic Protection of Citizens Abroad* (N. Y., 1915), p. 452.

[43] Taft, *op. cit.* pp. 85, §7.

[44] Richardson, *op. cit*, I, p. 326.

[45] *Supra*, notes 20–22.

[46] *Congressional Record*, Vol. 40, p. 1417, quoted in Corwin, *op. cit.* p. 171; Reinsch, *Readings in American Federal Government*, p. 82.

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involved the exercise of a power which infringes upon the constitutional rights of the executive."[47] Perhaps the language of these statements is extreme. Our Constitution recognizes no "mysteries of state" excluded from congressional examination. The constitutional powers of the Senate and Congress justify them in requesting information and exercising a very real check on presidential foreign policies. Yet practice in recognition, treaty making and war making accords to the President the initiative, and much independence in carrying out, foreign policies.

Viewing our system as it is, we must conceive of the foreign-relations power as a distinct department of the government vested in the President, restrained by senatorial or congressional veto. It is the reverse of the legislative power in which Congress initiates and enacts, subject to a limited presidential veto. It also differs from the executive power where the President acts independently, but within narrowly defined statutes of Congress.

II

Two things seem to be needed in an institution designed to conduct foreign relations with success—concentration, or the ability to act rapidly and finally in an emergency; and popular control to give assurance that permanent obligations will accord with the interests of the nation. The subordination of national interests to dynastic and personal ends, prominent in sixteenth and seventeenth century diplomacy, showed the vice of an irresponsible concentration of power. The natural remedy seems to be parliamentary participation in treaty making and war making, and this has in fact been provided for in most continental European constitutions during the nineteenth and twentieth centuries.[48] In Great Britain alone, the Crown preserves its ancient prerogative in these matters, and although in practice

[47] Richardson, *op. cit.*, VII, p. 431, quoted in Corwin, *op. cit.* p. 44.

[48] See Myers, "Legislatures and Foreign Relations," *American Political Science Review*, Vol. 11, p. 643 *et seq.* (Nov. 1917), and British report on treatment of International Questions in Foreign Governments, Parl. Pap., Misc. No. 5 (1912), Cd. 6102, printed in appendix 2, Ponsonby, *Democracy and Diplomacy*, p. 128 *et seq.*

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Parliament is sometimes consulted before ratification of important treaties, Lord Bryce and others have urged a more certain method of popular control, suggesting study of the American process of Senate participation.[49] But why labor the point? Democracy is convinced of the merits of democratic diplomacy. There is greater need to emphasize the importance of concentration.

This need of concentration of power for the successful conduct of foreign affairs was dwelt upon in the works of John Locke,[50] Montesquieu,[51] and Blackstone,[52] the political bibles of the con-

[49] *Supra*, notes 6, 7. For relations of Crown and Parliament in treaty making in Great Britain, see Anson, *Law and Custom of the Constitution* (3rd ed.), II, pt. II, p. 103 *et seq.*

[50] "These two powers, executive and federative (foreign relations), though they be really distinct in themselves, yet one comprehending the execution of the municipal laws, of the society within itself, upon all that are parts of it; the other the management of the security and interest of the public without, with all those that it may receive benefit or damage from; yet they are always almost united. And though this federative power in the well or ill management of it be of great moment to the commonwealth, yet it is much less capable to be directed by antecedent, standing, positive laws, than the executive; and so must necessarily be left to the prudence and wisdom of those whose hands it is in, to be managed for the public good; for the laws that concern subjects one amongst another, being to direct their actions, may well enough precede them. But what is to be done in reference to foreigners, depending much upon their actions, and the variation of designs, and interests, must be left in great part to the prudence of those who have this power committed to them, to be managed by the best of their skill, for the advantage of the commonwealth," Locke, *Two Treatises of Government*, sec. 147, *Works* (ed. 1801), V, p. 425.

[51] "By the [executive power, the prince or magistrate] makes peace or war, sends or receives embassies; establishes the public security, and provides against invasions. The executive power ought to be in the hands of a monarch; because this branch of government, which has always need of expedition, is better administered by one than by many: Whereas, whatever depends on the legislative power, is oftentimes better regulated by many than by a single person. But if there was no monarch, and the executive power was committed to a certain number of persons selected from the legislative body, there would be an end of liberty; by reason the two powers would be united, as the same persons would actually sometimes have, and would moreover always be able to have, a share in both." Montesquieu, *L'Esprit des lois*, I, bk. XI, ch. 6.

[52] "With regard to foreign concerns, the king is the delegate or representative of his people. It is impossible that the individuals of a state, in their collective capacity, can transact the affairs of that state with another community equally numerous as themselves. Unanimity must be wanting to their measures, and

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stitutional fathers. It was emphasized by many speakers in the Federal convention,[53] by the authors of the Federalist,[54] and by President Washington in his message on the Jay treaty.[55] The

strength to the execution of their counsels. In the king, therefore, as in a centre, all the rays of his people are united, and form by that union a consistency, splendor, and power, that make him feared and respected by foreign potentates; who would scruple to enter into any engagement that must afterwards be revised and ratified by a popular assembly. What is done by the royal authority, with regard to foreign powers, is the act of the whole nation; what is done without the king's concurrence, is the act only of private men." Blackstone, *Commentaries*, I, p. 252.

[53] See remarks by Hamilton and Gouverneur Morris, Farrand, *op. cit.*, I, pp. 290, 513.

[54] "It seldom happens in the negotiation of treaties, of whatever nature, but that perfect secrecy and immediate dispatch are sometimes requisites. There are cases where the most useful intelligence may be obtained, if the persons possessing it can be relieved from apprehensions of discovery. These apprehensions will operate on those persons whether they are actuated by mercenary or friendly motives; and there doubtless are many of both descriptions who would rely on the secrecy of the President, but who would not confide in that of the Senate, and still less in that of a large popular Assembly. The convention have done well, therefore, in so disposing of the power of making treaties that although the President must, in forming them act by the advice and consent of the Senate, yet he will be able to manage the business of intelligence in such a manner as prudence may suggest.

"They who have turned their attention to the affairs of men must have perceived that there are tides in them; tides very irregular in their duration, strength, and direction, and seldom found to run twice exactly in the same manner or measure. To discern and to profit by these tides in national affairs is the business of those who preside over them; and they who have had much experience on this head inform us that there frequently are occasions when days, nay, even when hours, are precious. . . . So often and so essentially have we heretofore suffered from the want of secrecy and dispatch that the Constitution would have been inexcusably defective if no attention had been paid to those objects. Those matters which in negotiations usually require the most secrecy and the most dispatch are those preparatory and auxiliary measures which are not otherwise important in a national view than as they tend to facilitate the attainment of the objects of negotiation. For these the President will find no difficulty to provide; and should any circumstance occur which requires the advice and consent of the Senate, he may at any time convene them." The *Federalist* (Jay), No. 64 (Ford ed.), pp. 429–430. See also Hamilton, No. 70 (Ford ed.), p. 467.

[55] "The nature of foreign negotiations requires caution, and their success must often depend on secrecy; and even when brought to a conclusion a full disclosure of all the measures, demands, or eventual concessions which may have been proposed or contemplated would be extremely impolitic; for this might have a pernicious influence on future negotiations, or produce immediate inconven-

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same opinion was restated by DeTocqueville, who, because he doubted the ability of democracy to achieve this concentration doubted its capacity to cope with foreign affairs. "As for myself," he said, "I have no hesitation in avowing my conviction that it is more especially in the conduct of foreign relations, that democratic governments appear to me to be decidedly inferior to governments carried on upon different principles. Foreign politics demand scarcely any of those qualities which a democracy possesses, and they require on the contrary the perfect use of almost all those faculties in which it is deficient. . . . . Democracy is unable to regulate the details of an important undertaking, to persevere in a design, and to work out its execution in the presence of serious obstacles. It cannot combine its measures with secrecy and it will not await their consequences with patience. These are qualities which more especially belong to an individual or to an aristocracy and they are precisely the means by which an individual people attains to a predominant position."[56]

But lest the apologist of the "Ancient Régime" be thought biased, let us hear a recent writer of a different school. Mr. Walter Lippmann thus discusses the uses of a king: "The reason why we trust one man, rather than many, is because one man can negotiate and many men can't. Two masses of people have no way of dealing with each other. . . . . The American people cannot all seize the same pen and indite a note to sixty-five million people living within the German Empire. . . . . The very qualities which are needed for negotiation—quickness of mind, direct contact, adaptiveness, invention, the right proportion of give and take—are the very qualities which masses of people do not possess."[57]

iences, perhaps danger and mischief, in relation to other powers. The necessity of such caution and secrecy was one cogent reason for vesting the power of making treaties in the President, with the advice and consent of the Senate, the principle on which that body was formed confining it to a small number of members." Washington, Message to the House of Representatives, March 30, 1796, in Richardson, *op. cit.* p. 194.

[56] De Tocqueville, *Democracy in America* (N. Y. 1862), I, p. 254.

[57] Lippman, *The Stakes of Diplomacy*, pp. 26, 29. See also remarks of Senator Spooner of Wisconsin in the Senate, January 23, 1906: "The conduct of our foreign relations is a function which requires quick initiative, and the Senate is

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As practice is the best evidence of what constitutions are, so history is the best evidence of what institutions must become, if they are to perform their functions. "Even democratic countries like France and England," says Bryce, "are forced to leave foreign affairs to a far greater degree than home affairs to the discretion of the ministry of the day."[58] The Greek city states in which diplomacy by mass meeting led to disaster when confronted by the astuteness of Philip of Macedon are the exceptions which prove the rule.[59] Thus in the United States when foreign problems have come to the front, concentrated authority has been developed to cope with them. In the first period, from 1789 to 1829, foreign relations were complex. Presidents were chosen because of their experience in diplomacy and they displayed competence and leadership. There was friction, but in all cases until the last—John Quincy Adams' policy with reference to the Panama Congress—the President's policy prevailed. In the second period, which extended from 1829 to 1898, our problems were mainly domestic. In these Congress assumed a leadership, and though Presidents continued to assert their prerogative in foreign affairs, opportunities were only occasional, and defeats were frequent. Presidents were chosen for political availability, not for ability or experience, and the Senate's power of vetoing treaties was strengthened by frequent exercise. In his *Congressional Government*, presented as a doctor's thesis in 1885, Woodrow Wilson generalized the progress of this period as follows:[60]

"In so far as the President is an executive officer he is the servant of Congress; and the members of the Cabinet, being confined to executive functions, are altogether the servants of Congress."

"No one, I take it for granted, is disposed to disallow the principle that the representatives of the people are the proper ulti-

often in vacation. It is a power that requires celerity. One course of action may be demanded to-night, another in the morning. It requires also secrecy; and that element is not omitted by the commentators on the Constitution as having been deemed by the framers of the most vital importance. It is too obvious to make elaboration pardonable." *Congressional Record*, Vol. 40, pp. 1419–1420; quoted in Corwin, *op. cit.* p. 176.

[58] Bryce, *American Commonwealth* (2nd ed.), I, p. 218.

[59] *Ibid.* I, p. 217.

[60] Wilson, *Congressional Government* (15th ed.), pp. 266, 273–274.

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mate authority in all matters of government and that administration is merely the clerical part of government. Legislation is the originating force. It determines what shall be done; and the President, if he cannot or will not stay legislation by the use of his extraordinary power as a branch of the legislature, is plainly bound in duty to render unquestioning obedience to Congress. . . . . The principle is without drawback and is inseparably of a piece with all Anglo-Saxon usage; the difficulty if there be any, must lie in the choice of means whereby to energize the principle. The natural means would seem to be the right on the part of the representative body to have all the executive servants of its will under its close and constant supervision, and to hold them to a strict accountability; in other words, to have the privilege of dismissing them whenever their service became unsatisfactory."

The third period began with the Spanish war of 1898. Our foreign relations have increased in complexity, and with them the President's power and influence; but because of the enlarged sense of senatorial prerogative, developed through three quarters of a century of comparative diplomatic isolation, friction has been extreme. Woodrow Wilson, then professor of politics at Princeton University, wrote a preface for the fifteenth edition of his book in 1900:[61]

"Much the most important change to be noticed is the result of the war with Spain upon the lodgment and exercise of power within our federal system; the greatly increased power and opportunity for constructive statesmanship given the President, by the plunge into international politics and into the administration of distant dependencies, which has been that war's most striking and momentous consequence. When foreign affairs play a prominent part in the politics and policy of a nation, its Executive must of necessity be its guide; must utter every initial judgment, take every first step of action, supply the information upon which it is to act, suggest and in large measure control its conduct. It may be, too, that the new leadership of the Executive, inasmuch as it is likely to last, will have a very far-

[61] Wilson, *Congressional Government* (15th ed.), pp. xi–xiii.

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reaching effect upon our whole method of government. It may give the heads of the executive departments a new influence upon the action of Congress. It may bring about, as a consequence, an integration which will substitute statesmanship for government by mass meeting. It may put this whole volume hopelessly out of date."

Where the President has acted in domestic administration, he has acted within limits narrowly defined by Congress, and as time has gone on, his discretion in this field has become less and less. Where on the contrary, he has acted in foreign affairs, his discretion has been very wide, and Congress has generally followed his lead. "The Senate," says Carl Russell Fish, "has been confined to checking or modifying the policy of the administration. The direction of policy has been with the executive."[62] Can we not assume that the result of over a century of experience under the Constitution illustrates certain necessities in an adequate control of foreign affairs?

III

Our system for controlling foreign relations has been copied in its main outlines on the continent of Europe, and its adoption has been suggested as a reform worth considering in Great Britain. It has in it elements making for concentration of authority in an emergency, yet it assures control of permanent obligations by the people's representatives. More than all we are used to it. Remembering Montaigne's warning that "all great mutations shake and disorder a state,"[63] we may question the advisability of radical change in the Constitution.

Improvement lies not in structural change in our organs for control of foreign relations,[64] but in the development of conven-

[62] Fish, *American Diplomacy* (N. Y., 1916), p. 428.

[63] Montaigne, *Essays* (Cotton ed.), II, p. 760.

[64] The writer is inclined to believe that a change in the treaty power from two-thirds of the Senate to a majority of both houses would be an improvement. This would be in accord with the practice of most continental European governments. It would obviate the complaints of the House of Representatives and eliminate the ever-present possibility of inability to execute a treaty, valid as international law, because of the refusal of the House to agree to appropriations

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tions for the smooth interaction of the independent departments of government. Lord John Russell remarked that "Political constitutions in which different bodies share the supreme power are only enabled to exist by the forbearance of those among whom this power is distributed."[65] It is a familiar thought and has been developed in detail by Professor A. V. Dicey, who distinguishes the conventions from the law of the British constitution. The former explain how the independent organs of the supreme power, king, lords and commons shall exercise their discretion, that is, how the Crown shall exercise its prerogative and the houses of Parliament their privileges. He believes that in England, these conventions have grown up so as to assure the ultimate triumph of the will of the political sovereign, that is, the majority of the voters for members of the House of Commons.[66]

In the eighteenth century the British Constitution, though perhaps organized to preserve liberty, as Montesquieu, DeLolme and Blackstone thought, was a jarring and jangling instrument. There was little of smoothness in the relations of George III with his ministers and his parliaments. The United States Constitution is now in that condition. We have good institutions but we have not yet developed constitutional manners which will make them move as smoothly as a well-ordered dinner party. The crudity of Jefferson's pell mell banquet and Jackson's Peggy O'Neil cotillion persists in the relations of the departments at Washington.

Our conventions will not be those of England. In the conduct of domestic affairs our system of legally enforceable limitations

or necessary legislation. It would, also, make deadlocks less frequent, because one party is much more likely to control a majority of both houses than two-thirds of the Senate. The main objection of the fathers to submission to the House was on the score of secrecy and this has frequently been abandoned by the Senate in recent years. This change, which would of course require a constitutional amendment, would make the treaty-making power the same as the legislative power, except that the President would have the sole initiative and, retaining the ultimate decision on ratification, would have an absolute veto. See also Young, *The New American Government*, p. 25, and former Representative and Governor of Massachusetts, S. W. McCall, "Of the Senate" and "Again the Senate" in *Atlantic Monthly*, October, 1903, and September, 1920.

[65] Quoted by Wilson in *Congressional Government* (15th ed.), p. 242.

[66] Dicey, *The Law of the Constitution* (8th ed., London, 1915), ch. 14.

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upon power, rather than the English system of unlimited power, subject to immediate political responsibility for its exercise, is likely to persist. We will continue to rely upon legal responsibility, rather than political responsibility as in Great Britain, or administrative responsibility, as on the continent of Europe. In short, the object of the conventions which we will develop will be the ultimate triumph of the people acting through the constitution-amending process, not as in Great Britain, through an election to the House of Commons.

In the conduct of foreign affairs, however, there will probably be a closer approximation in the two countries. At present parliamentary control does not exist in the British foreign office,[67] any more than constitutional limitations check the President's control of foreign relations.[68] In foreign affairs neither a daily questioning under threat of ousting from office, nor a judicially interpreted confinement to constitutional powers is feasible. Great discretion must be vested in a single head. Acts involving assumptions of national responsibility must be final. We must frankly recognize executive leadership in foreign affairs. But we must attempt to develop conventions so that the President's wide discretion will only be exercised after the most careful consideration possible, and in a way which will make the employment of a senatorial or congressional veto an extreme rarity, and an impeachment a virtual impossibility.

Such conventions might develop through:

(1) Declaration by Congress of permanent policies, not in any way restricting executive methods, but pointing the general ends toward which the President should direct his effort;[69]

[67] See remarks of A. J. Balfour and Premier Asquith to select committee of the House of Commons on Procedure, 1914 (Report 378), printed in Ponsonby, *op. cit.*, appendix 1, p. 121 *et seq.* and *ibid.*, ch. 5, p. 45 *et seq.*

[68] See H. J. Ford, "The War and the Constitution," and "The Growth of Dictatorship," *Atlantic Monthly*, October, 1917, and May, 1918.

[69] Some resolutions of this kind have been passed, expressive of a policy of disarmament and arbitration. See Joint resolution, June 25, 1910, 36 stat. 885, and navy appropriation act, August 29, 1916, 39 stat. 618, Comp. stat. sec. 7686a. Resolutions favoring arbitration were also passed in 1874 and 1890. See "A League of Nations" published by World Peace Foundation, Vol. I, No. 1, October, 1917.

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(2) Development by treaty of international organization and arbitration so as to bring as large a portion of diplomacy as possible under the control of recognized principles of international law, an atmosphere in which democratic institutions and particularly American institutions have always thriven;[70]

(3) Observance by the independent departments of government of the understanding that each will regard it as a constitutional duty to seek advice, before making a decision, from those coördinate departments whose action will subsequently be required to carry out the decision, in consideration of which those departments will regard it as a constitutional duty to perform all acts within their power necessary to give full effect to the decisions constitutionally made by coördinate departments;[71] finally, as a necessary condition of such observance:

(4) Maintenance of close informal relations between the agencies of government having to do with foreign affairs. Such relations now exist between the President and the administrative

[70] "Democracies are absolutely dependent for their existence upon the preservation of law. Autocracies can give commands and enforce them. Rules of action are a convenience, not a necessity for them. On the other hand, the only atmosphere in which a democracy can live between the danger of autocracy on one side and the danger of anarchy on the other is the atmosphere of law. . . . The conception of an international law binding upon the governments of the world is, therefore, natural to the people of a democracy, and any violation of that law which they themselves have joined in prescribing is received with disapproval, if not with resentment." Root, "The Effect of Democracy on International Law," American Society International Law *Proceedings* (1917), pp. 7-8.

[71] "It is a general principle that any valid act done by either the legislative, executive or judicial branches of the government is binding upon each of the others, and is not subject to be set aside by either of them." (Finley-Sanderson, *The American Executive and Executive Methods* (N. Y., 1908), p. 217.) "There is force, no doubt, in the contention that the Congress of the United States is under a moral obligation to maintain the honor of the nation, which implies the strict fulfillment of all pledges made by the treaty-making power, but there is even more weight in the affirmation that the treaty-making power is under a moral obligation not to pledge the honor of the nation in doubtful conditions, as well as under a legal obligation not to destroy the freedom of a coordinate branch of the Government by pledging it to a performance beyond the intentions of the Constitution from which all its authority is derived." Hill, *Present Problems in Foreign Policy* (N. Y., 1919), p. 171. See also Wright, *American Journal International Law*, Vol. 12, p. 94.

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departments represented in the cabinet. Why should not the cabinet be enlarged so as to include representatives of the legislative branch? Addition of the vice-president who is closely in contact with the Senate, has been suggested by President-elect Harding. But a more genuine congressional point of view could be gained by admitting also the Speaker of the House, President *pro tem.* of the Senate, and perhaps the chairmen of the House committee on foreign affairs and the Senate committee on foreign relations. The President, sitting with these five officials, together with the secretaries of state, treasury, war, navy, commerce and the attorney-general would form a cabinet capable of reaching decisions on foreign affairs likely to secure coöperation from all departments of the government and yet not too large to do business.

Closer relations might also be established by the President with Congress, and especially with the Senate, through personal delivery of messages and explanations of his policy, but always at his initiative.[72] The present practice whereby Congress does not "direct" the secretary of state to submit papers and information, as it does other cabinet officers, but requests the real head of that department, the President of the United States, "to submit matters if in his judgment not incompatible with the public interest," must be maintained.[73]

[72] Rule XXXVI of the Standing Rules of the Senate still provides the manner in which the President is to meet the Senate in executive session. Henry Cabot Lodge, in referring to the recognition in this rule of the right of the President to meet with the Senate in consideration of treaties, said, in the United States Senate, January 24, 1906: "Yet I think we should be disposed to resent it if a request of that sort was made to us by the President." *Congressional Record,* 59th Cong., 1st Sess., Vol. 40, p. 1470, in Crandall, *op. cit.* p. 68, n. 5. President Wilson revived the custom, in abeyance since the time of John Adams, of appearing in person before Congress.

[73] "The act creating the Department of State, in 1789, was an exception to the acts creating the other Departments of the Government. I will not stop to refer to the language of it or to any of the discussions in regard to it, but it is a Department that is not required to make any reports to Congress. It is a Department which from the beginning the Senate has never assumed the right to direct, or control, except as to clearly defined matters relating to duties imposed by statute and not connected with the conduct of foreign relations. We *direct* all the other heads of Departments to transmit to the Senate designated papers or information. We do not address directions to the Secretary of State, nor do

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Finally, close informal relations between the President and congressional committees on foreign affairs should exist, here again, at the President's initiative. President Madison was right, as Senator Lodge pointed out in 1906, in refusing to receive a Senate committee sent on command of that body to interview him with reference to an appointment of a minister to Sweden.[74] But the President should often invite such committees to discuss with him.[75] Thus without limiting the President's power in foreign relations, or in any way impairing his capacity to take speedy action when necessary, we might develop conventions which would show him how he ought to exercise his discretion—conventions sanctioned in last analysis by the possibility of senatorial or congressional veto of his measures, defeat of his party in the next election, or even impeachment.

Though this article has dealt with constitutional law and constitutional conventions, it must be emphasized that the system is not the most important part of government. Any system will work with big men. It is the merit of the British system that it brings big men to the top. The United States must develop political traditions and methods that will do the same. The people and parties must insist on men of experience and of capacity as candidates—no more dark horses. Why not with due allowance of course to the exigencies of party government, develop traditions of advancement, as from a governorship to the Senate, then to the vice-presidency, or to the cabinet, and finally to

we direct requests, even, to the Secretary of State. We direct requests to the real head of that Department, the President of the United States, and, as a matter of courtesy, we add the qualifying words, 'if in his judgment not incompatible with the public interest.' " Senator Spooner, of Wisconsin, in Senate, January 23, 1906, *Congressional Record*, Vol. 40, p. 1420, quoted in Corwin, *op. cit.* p. 177; and in Crandall, *op. cit.* p. 93.

[74] "In the Administration of Mr. Madison the Senate deputed a committee to see him in regard to the appointment of a minister to Sweden, I think, and he replied that he could recognize no committee of the Senate, that his relations were exclusively with the Senate." Senator Lodge of Massachusetts, during course of debate referred to *supra*, n. 73, p. 1419; Corwin, *op. cit.* pp. 174–175.

[75] A recent illustration is President Wilson's offer to discuss the Treaty of Versailles with the Senate foreign relations committee, an offer which resulted in several conferences in the White House during the summer of 1919. See Sen. Doc., No. 106, p. 499 *et seq.*, 66th Cong., 1st Sess.

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the presidency. It was done in the first forty years of our national history.[76] It would lead stronger men to the Senate and cabinet. It would insure capacity and popular confidence in the President.

[76] Political and administrative experience of Presidents of the United States:

	VICE-PRESIDENT	CABINET	DIPLOMATIC	MILITARY	FEDERAL OFFICE	SENATE	HOUSE OF REPRESENTATIVES	GOVERNOR
Washington				x				
Adams, J	x		x				*a*	
Jefferson	x	x	x				*a*	x
Madison		x					x	
Monroe		x	x	x		x	x	x
Adams, J. Q		x	x			x	x	
Jackson				x	*b*	x	x	
Van Buren	x	x	x			x		x
Harrison, W. H				x	*c*	x	x	
Tyler	x			x		x	x	
Polk							x	x
Taylor				x				
Fillmore	x						x	
Pierce				x		x	x	
Buchanan		x	x			x	x	
Lincoln							x	
Johnson	x					x	x	x
Grant		x		x				
Hayes				x			x	x
Garfield				x		x	x	
Arthur	x			x	*d*			
Cleveland								x
Harrison, B				x		x		
McKinley				x			x	x
Roosevelt	x			x	*e*			x
Taft		x	*f*		*g*			
Wilson								x
Harding						x		
28	8	8	7	14	5	12	17	10

a—Member of Continental Congress before Constitution.
b—Military Governor of Florida.
c—Governor of Indiana territory.
d—Collector of Port of New York.
e—Civil Service Commission; Assistant Secretary of Navy.
f—Special mission to the Pope.
g—Solicitor General of United States; United States Circuit Judge; Governor of Philippines.

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A tradition of advancement not only from legislative to high executive office, but also in the other direction seems desirable. Why not retain the services of ex-Presidents and secretaries by electing them to the Senate. It has been suggested that our present American practice has too much the habit of having young men to begin their political career in the legislature, leaving the higher executive positions to the more experienced men in public life. One of the advantages of the old Roman Senate was that it included men that had experience in executive office. In our own recent experience, the transfer to the Senate of men like Root and Knox, who had been in the cabinet, added an element to the Senate which tended to improve that body.

Wilson, *Congressional Government*, pp. 251–256, refers to the tendency of the governorship rather than membership in the Senate or House to be in the line of promotion to the Presidency. Reinsch notices a change in the tradition of advancement to secretary of state:

"From Monroe's secretaryship of state in 1811, down to the resignation of Mr. Blaine, that position was held constantly by men who had been United States senators, with the exception of brief interregna, covering altogether less than one and a half years, and with the exception of William M. Evarts who became a senator later in his career. Since the resignation of Mr. Blaine, an entirely new system has come into use, Senators Sherman (and Knox) being the only Secretaries of State who had also been members of the Senate. Under these circumstances, it is not surprising that there should have been more friction between the President and the Senate on foreign matters than existed during the earlier years of our national life." *American Legislatures and Legislative Methods* (N. Y. 1913), p. 95, quoted in Willoughby, *op. cit.*, p. 460.

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POLITICAL AND SOCIAL RECONSTRUCTION IN FRANCE

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In 1871 France was defeated in a six-months' war, by a rival seeking revenge for the humiliations of Jena and Auerstadt. In 1918 France emerged the victor from a fifty-one months' struggle with the same foe. But, unhappily, the spoils reaped from her victory offered slight compensation for the sacrifices she had recently been compelled to make or for the penalties she had paid forty-seven years before. The year 1918, indeed, saw the return of Alsace-Lorraine and the complete restoration of the territorial unity of the French nation; it witnessed no upheaval of government; it experienced no communist revolution. But it found France socially, politically and morally disorganized and exhausted; it found her finances upon the verge of bankruptcy; it found her manhood decimated by some fourteen hundred thousand, and one-tenth of her richest provinces scourged by the flame of war. The year 1918 found France with a form of government which in many respects was regalian and unrepresentative; it found profiteers not only preying upon the necessities of the people but systematically evading the payment of taxes; it found labor tremendously powerful and wielding its strength not so much to force the adoption of economic reforms, as to achieve distinct political privileges. The year 1918 found France confronted with a revengeful Germany, whose recuperative powers seemed far greater than her own, in a position likely to become more tragic with the developing antagonism of England and Italy and the probable withdrawal of the United States from European affairs. In fact, to many her situation appeared desperate: internal discord was undermining the social structure, while, across the Rhine, Berlin seemed preparing to fall upon a decadent state.

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I

It was natural that the French people should look to their government to remedy the disorganized and unstable condition in which the country found itself. It was equally natural that they should first demand that changes be made in the governmental organization, with a view to making it more representative of the wishes of the country and more efficient in carrying them out.

The first measure of governmental reconstruction adopted was the electoral law of July 12, 1919, already described in the REVIEW, which provided for a limited system of proportional representation and for the *scrutin de liste*. The law worked unsatisfactorily in the 1919 elections, because it provided for the use of the proportional feature only when no candidate had received a majority. As a result, the defects of both systems survived, causing dissatisfaction not only among the Socialists and Radicals who lost most heavily by it, but among the conservative elements who were forced into a *bloc*, against their will, to prevent the victory of their more radical but better organized opponents. The commission of the chamber on universal suffrage has now voted to change the present law; and it is very likely that a complete system of proportional representation will be adopted.

The idea of proportional representation in France, however, is being fast supplanted by that of professional representation, that is, the representation of interests and classes in government. In a campaign speech made in Paris, November 7, 1919, M. Millerand advocated that senators be chosen by chambers of commerce, unions of employers and employees, the General Confederation of Labor, and the academies. Furthermore, he disregarded party lines in his cabinet, for it contained a large majority of Radicals and Republican-Socialists, while the chamber is overwhelmingly conservative. In place of party representatives, he appointed experts—men with a special knowledge of the services for which they are responsible. Thus M. François Marsal, minister of finances, is a distinguished Paris banker

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and financial writer—a director in the Parisian Union, and was financial councillor to M. Clemenceau during the war; M. Ricard, minister of agriculture, is a representative of the National Federation of Agricultural Associations; M. Coupin, is a former railway employee, having been President of the Federation of Railway Engineers.

M. Millerand's idea of a parliament based on professional interests, rather than geographical divisions, is not new. Occupational and economic interest, is of course, the theoretical basis of the soviet system in Russia, as pointed out in the May number of the REVIEW. As early as 1895 Charles Benoist, now the French minister to Holland, advocated a Chamber of Deputies chosen by the voters grouped in the following seven classes: agriculture, industry, transportation, posts and telegraphs, commerce, public administration, liberal professions, and capitalists. Similar suggestions have been made by Professor Léon Duguit, Jean Hennessy, and Lysis, the combative editor of *La Démocratie Nouvelle*. Thus the advocates of professional representation in Parliament are many and urgent. The basis of such a system of government, which would greatly reduce the preponderance which the lawyers now hold, already exists in the extended organization of nearly every social class and profession in France. The objections to a professional government are numerous. One is that it would multiply the number of parliamentary groupings, each seeking to serve its own interest instead of the national well being. Another is that the classification of voters in fixed and permanent categories is well-nigh impossible. Nevertheless it is possible that France may adopt the plan as a compromise with the industrial dictatorship which socialism and syndicalism have been preaching. The mere representation of labor as a class in Parliament may allay its demands for complete revolution. Moreover, such a reform, if limited to the Senate, would have little real effect upon government activities, since the influence of the upper body is naturally subordinate to that of the Chamber of Deputies.

Much has been written about the need of a more stable executive in France, and many French as well as foreign publicists have

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taken this to mean a stronger and more independent president. During the electoral campaign of November, 1919, many parties urged that increased power be given the President of the French Republic, Aristide Briand being one of those most outspoken in this demand. There are theoretical as well as historical reasons, however, why the powers of the French President cannot be extended. As long as France maintains a parliamentary form of government, the minister must be responsible to Parliament. A strong and independent president, on the other hand, can only mean an executive free from parliamentary supervision. But France cannot tolerate what would virtually amount to a monarchical or Bonapartist republic because of the danger of vesting the direction of a highly centralized and bureaucratic government in the hands of an executive which Parliament cannot control. The attempts of General Boulanger and Paul Déroulède to establish a "government by plébiscite" are still so fresh in the minds of the French public that any movement tending to grant more power and independence to the executive is ordinarily looked upon as a movement of reaction. M. Clemenceau, in his famous Strasbourg speech of November 4, 1919, answered these reformists as follows:

"I see candidates who demand an increase in executive power. Having seen this grave problem 'from both sides of the fence,' if I may dare so to speak, I cannot make up my mind to follow them. The American system, where the central authority is controlled by a federation of independent states, against which no attempt at usurpation can even be attempted, cannot be introduced in France except with directly opposite results.

"The truth is very simple: the defects in executive powers are less from lack of means of action than from the too frequent incapacity of the men at the height of responsibility."

At the election for President in January, 1920, the opposition to M. Clemenceau and the election of M. Deschanel, a less aggressive personality, seemed to indicate the continued sentiment against a strong chief executive.

The prolonged illness of President Deschanel naturally brought a temporary close to the demand for an increase in executive

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power. But on the other hand, it caused a demand for the creation of a vice-president, an office at present unknown to the French Constitution. Although the duties of the French President are largely formal and social, they are nevertheless very important. When he is unable to perform them, it seems that French society is leaderless. It was therefore urged that a vice-president be provided for to carry out the social and formal duties of the President during his incapacity. It is possible to amend the Constitution so as to make the vice-president also the president of the Senate. But it is unlikely that a vice-president, if created, will ever be permitted automatically to succeed to the presidency at the death or resignation of the executive, because of the ease with which the French President is elected. He is chosen merely by a majority vote of the two chambers of the French Parliament sitting together as the National Assembly.

On the 17th of September, 1920, Paul Deschanel resigned from the presidency. The subsequent election of Alexandre Millerand on the 23rd, by a vote of 695 to 69 for his Socialist opponent, Gustave Delory, has revived the discussion of a more active presidential authority. For M. Millerand's election led the radical press of France and England to declare that, in the words of *La Bataille*, *"La République est morte."* Their fear that a new Boulanger had now been installed in power was inspired not only by the great personal force of M. Millerand, but by the statements he made upon his election. In an interview given to *Le Temps* he declared himself in favor of "revision," which, however, "had as its end, not to increase the authority of the President, but to place this authority more at the service of the government." He further qualified his statement by saying that while he believed in "revision," it could only be contemplated after France had first solved her economic and financial difficulties. In his speech of acceptance before the National Assembly, the new President also said: "If there is a particularly strict duty for the President of the Republic, it is to assure, in concert with the ministers, who are the defenders of the government's policy before the Chamber and interpreters to the President of the wishes of Parliament, the continuity of a foreign policy worthy of our victory."

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These statements have led many to fear that Millerand will attempt to enlarge the powers of the presidency and overthrow the present system of parliamentary government. However, a closer examination of M. Millerand's statements will do much toward dispelling these fears. In his utterances so far he has applied the doctrine of increased presidential power largely to the direction of foreign policy. Article VIII of the constitutional law of July 16, 1875 gives the President the right to negotiate treaties and conduct foreign affairs. In President Millerand's opinion this article is worthless unless the President actually does participate in those duties.[1] He realizes the present straits of French foreign policy; he feels the pressure being made by the Allies to revise the Treaty of Versailles. Official France does not believe in revision, and Millerand will insist that the present foreign policy be pursued. If he does not actually control it, a weak minister of foreign affairs, under the influence of radical interpellations, may give way.

There need be little fear for the Republic, however, even if Millerand does direct the foreign policy of France. One has only to recall the rôle which President Grévy played in the Schnaebele affair, the parts of Carnot and Félix Faure in the negotiation of the Russian alliance, that of Loubet in laying the foundations for the Entente Cordiale, and of Fallières in the Agadir incident, to realize that the President of the French Republic has already established his right of diplomatic intervention. And the experience has not proven disastrous.

Raymond Poincaré, in a special article in *Le Temps* (Sept. 27),[2] commenting on these precedents, says that M. Millerand merely desires to carry on the work of former presidents. However, M. Poincaré significantly adds that "in order that he may acquit himself happily of the duty he has so well described and which, more than any other, he is capable of filling, it is desirable that

[1] M. Millerand apparently forgets that other articles of the Constitution grant the President even wider powers, such as the suspensive veto, the right to initiate legislation, to dissolve parliament, etc.—powers which he never directly exercises any more than the English king now utilizes his veto power.

[2] See also *Living Age*, November 6, 1920.

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he always find . . . . a prime minister and a ministry in whom he has confidence and in whom Parliament has confidence."

As M. Poincaré points out, parliamentary control must always exist, and as long as it does, ministerial responsibility must be retained. The efforts of M. Millerand toward increasing the powers of the presidency therefore will always be automatically limited by this fact, although his personal influence may go far in actually controlling the foreign policy of France.[3]

Demands for administrative reforms, for the decentralization of public services and for regionalism (the fusion of the present departments into a smaller number of regions, each based on natural economic delimitations) are still actively made.[4] M. Clemenceau advocated decentralization in his Strasbourg speech in November, 1919. M. Millerand has gone even farther in advocating regionalism; and it is interesting to note that his government took the first step toward this reform by introducing a bill establishing a regional council for Alsace-Lorraine, composed of representatives of professional interests.[5]

Such are a few of the measures which have been advocated or passed to improve the democracy and efficiency of the French government. One more instance may be added, for it marks the return to ordinary constitutional procedure. The 1920–24 Parliament which was called into regular session on January 13, 1920, was closed on August 1, 1920, by virtue of a decree, issued in accordance with article 2, of the law of July 16, 1875, which authorizes the President of the Republic to adjourn Parliament

[3] The new prime minister was Georges Leygues, a former colleague of Millerand in the famous Waldeck-Rousseau cabinet in 1899. The elevation of Aristide Briand to the premiership was contemplated by many; but the honor fell to Leygues, perhaps because of his friendship with Millerand and his willingness to carry on negotiations with the Vatican. On the defeat of the Leygues' ministry, in January, 1921, the selection of Briand as premier has been ascribed in part to the personal preference of President Millerand.

[4] See J. W. Garner, *American Political Science Review*, Vol. 14, p. 17 (1919); also articles in *Revue Générale d'Administration*, Vol. 42^2, pp. 17, 161, Vol. 42^3, p. 5 (1919), and *Revue des Sciences Politiques*, Vol. 43, p. 351 (1920).

[5] For a fuller discussion of the movement for professional representation and for increased executive power in France, as well of other subjects touched on in this article, see the writer's *Contemporary French Politics* (Appleton, 1920), particularly chapters VII and XI.

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after it has been in session five months. This authority, however, the President had not exercised during the war; the government did not dissolve Parliament; and it sat in continual session, keeping constant watch over the work of the ministry, although of course it took occasional recesses. Its adjournment on August 1, therefore, in accordance with the terms of the Constitution, marks a return to the normal methods of French parliamentarism, that will restore to the French ministry a breathing spell, between sessions of Parliament, which during the war it was not permitted to have.

II

The high cost of living, the disorganization of production, the instability of every phase of French economic and political life, during the early months of the armistice naturally exaggerated the grievances of labor. The apparent impotence of bourgeois governments to remedy these grievances—economic in character and largely resulting from conditions inevitably produced by the war—increased industrial unrest. It emboldened labor organizations in their demands, which now became political, and in their methods, which tended to desert parliamentary channels and to take the form of direct action.

Since November, 1918, two First of May celebrations have taken place. Both of them have been followed by political strikes which in some cases have had the overthrow of the government as their aim. Throughout the course of these two years the General Confederation of Labor has deserted the conservatism of Léon Jouhaux, its secretary; and its radical elements have been successful in forcing upon it the policy of the general strike. Within the General Confederation of Labor, the railwaymen have apparently led this movement. When conservative leaders brought an end to the strike called in February 1920, after the economic demands of the railwaymen had been granted, a great protest arose. So strong did it become that conservatives like M. Bidegarray were compelled to resign and see their places taken by radicals like MM. Sirolle and Monnousseau, who proclaimed the general strike as their goal. In

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the latter part of April, 1920, the railwaymen of the State-Western line, at a convention in Havre, unanimously adopted a motion rejecting proposals to the effect that delegations of men should meet with employers to settle their difficulties; instead they demanded direct action as a means to secure their aims.

This movement culminated in the general strike attempted by the General Confederation of Labor, following the First of May (1920) celebration. At this time, the railwaymen, the metal workers, the transport workers on subways, taxicabs, street cars, etc., the electricians, and the gas workers, were all called out. The strike was unsuccessful, largely because there was no economic issue involved, and because it was called to enforce purely political demands upon the government. Its failure was also insured by the energetic action of the Millerand government which decided to bring legal proceedings against the General Confederation of Labor with a view to its dissolution. The government charged that it had gone beyond the purpose of labor unions, as laid down in the organization law of 1884, which was "the study and defense of their economic interests." At the present writing, judicial action is being taken in an attempt to dissolve this labor body. Such a stroke on the part of the government is remarkably bold, for the General Confederation of Labor now has a membership of nearly 2,000,000. It is supported by the Unified Socialist party with a polling strength of 1,700,000. If M. Millerand succeeds in this attack, he will have won a great victory; if he fails, he will have tremendously increased the confidence of labor in its own strength and its belief in the inherent weakness of the bourgeois régime.

The Unified Socialist party has also increased in size and radicalism. The party has gradually withdrawn from an adherence to the sacred union, again to proclaim the supremacy of the class struggle and to refuse to participate in bourgeois ministries or to vote credits for such a government. Despite the *bloc* formed against them, the Socialist vote increased from 1,400,000 in 1914 to 1,700,000 in 1919. Their seats, however, were reduced from 101 to 68. This naturally increased the enmity of the Socialist party for the present régime, and strengthened the

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belief that in force alone—and not through the ballot—lay the one means of inaugurating the Socialist State. The increased radicalism of the Socialist party was illustrated in the Strasbourg congress, held in February, 1920. Here the party took a step which at Easter, 1919, it had proclaimed too "advanced;" it withdrew from the Second International and resolved to enter negotiations with the Third International of Moscow, a thoroughly bolshevist organization.

Thus in the syndicalist ranks of the Confederation and among the orthodox Marxian followers, the Unified Socialists, an increased hostility for the present social order has developed with astounding and disconcerting activity. It was this problem with which the two cabinets of MM. Clemenceau and Millerand had to deal. Both of these ministries, especially that of M. Millerand, were liberal in their attitude toward the reasonable grievances of labor. MM. Clemenceau and Millerand, throughout the whole course of their public careers, have posed as Socialists of some sort, and they have been responsible for the enactment of much progressive labor legislation. M. Clemenceau was too busily engaged in the peace negotiations to undertake a permanent and far-reaching solution of the problems of social reconstruction. Although order was as a rule maintained, labor grew increasingly bold; strikes became more frequent—613 occuring in the summer of 1919—and their purposes tended more and more to become revolutionary.

With the advent of the Millerand cabinet in 1920, however, the issue between labor and the government became clearly drawn. M. Millerand realized that a trial of strength must sooner or later come. He resolved to take the offensive. While energetically devoting itself to the solution of the important economic problems of the day—the cost of living, the refusal of many employers to obey the Eight-Hour Day Law, the state of the exchange—the government determined that labor should not depart from parliamentary methods to secure its own demands. The attempted dissolution of the labor confederation was the first move of the Millerand government to enforce the supremacy of law. The second was the introduction of a bill "for

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the peaceful settlement of industrial disputes," by M. Jourdain, minister of labor. This bill, submitted to the Chamber of Deputies in the spring of 1920, provides for conciliation and for compulsory arbitration in a large number of industries in which the public welfare is vitally involved. According to the terms of this bill, if a dispute arises in an industrial, commerical or agricultural establishment employing more than twenty men, a delegation of the workers involved must discuss the matters under dispute with the employer or his representative. The representatives of the workers must be over twenty-one, of either sex, and have been employed in the plant for at least six months. Their number is limited to five, except in the case of establishments employing more than five hundred workers of different kinds. Such a delegation must be received by the employer within twenty-four hours after its request, and it must be given a reply within the next twenty-four hours, unless the time is extended by mutual agreement.

If such a dispute cannot be settled by the above method, it must be referred to conciliation. The conciliator may be jointly selected by the two parties, or two conciliators may be chosen, one by each side. If no agreement as to the choice can be reached, the dispute must be referred to the concilation committee of the trade concerned or to the local justice of the peace. The parties must then be called together within forty-eight hours, and if an agreement is negotiated it must be drawn up in a collective agreement. If an agreement cannot be reached, the parties are advised to appeal to arbitration. The conciliation committee to which the parties must in this case appeal, is made up of an equal number of employees and employers; when it acts upon a compulsory arbitration case, this committee must also contain an equal number of representatives of the public, appointed by the minister of labor or other members of the cabinet.

If both parties, in the event of the failure of conciliation, decide to resort to arbitration, each nominates one or more arbitrators. If they cannot agree, they themselves choose an additional arbitrator. Any cessation of work during arbitration is prohibited.

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Compulsory arbitration with the equal prohibition of any "collective cessation of work" while the decision is being arrived at, is prescribed for the following industries of an essentially public nature, and the stoppage of which would endanger the life and the health of the community: (a) railroads, street car lines, and other means of transportations on land or sea; (b) gas and electricity works; (c) coal mines, water, lighting and power plants; (d) hospitals; (e) in towns of over 25,000 inhabitants—funeral undertakers, garbage collectors, etc.

If a strike occurs illegally in any of these plants for which compulsory arbitration is imposed, the government may take over the plant and personnel, and take whatever means it wishes to ensure the operation of the public services. Heavy penalties are imposed for the violation of the terms of the law.

This bill, in short, provides for a system of settlement of industrial disputes similar to that of the Canadian Industrial Disputes Act; it does not prohibit permanently the right to strike, but temporarily, during the period of arbitration. There is no provision compelling obedience to the arbitral award. Public opinion, it is hoped, will be able to enforce it.

In a third respect, the Millerand government exhibited a firmness lacking in previous ministries. The right of functionaries to organize into regular labor unions or syndicates, under the terms of the organization law of 1884, has been repeatedly denied. But notwithstanding this fact, many organizations of government employees, notably the school teachers, have for many years been organized in labor unions, and affiliated with the general confederation. Furthermore, in the spring and summer of 1919, practically all of the government employees' associations, most of which were known as *amicales*, became syndicates and joined the central labor body. The Clemenceau government did nothing to stop this clearly illegal movement. But the Millerand government, in June, 1920, ordered the syndicates of government employees dissolved. The National Federation of Functionaries, composed of 300,000 government employees, which had adhered to the General Confederation of Labor, refused to comply, saying that the government had agreed to maintain the *status quo* until a new law on the status of function-

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aries had been enacted. It remains to be seen whether the government will be strong enough to effect these dissolutions; the announcement of its intention, however, has been apparently successful in preventing the future adhesion of those organizations of functionaries not yet affiliated to the General Confederation of Labor. Thus the Congress of Police in the latter part of June, 1920, voted down a motion to become a syndicate, and decided to remain an *amicale*. The Millerand government does not deny the right of association to functionaries; such a right is granted to them by the associations law of 1901; but it does deny them the right to form typical labor unions, bringing with them the strike and affiliation with the General Confederation of Labor.

In attempting to dissolve the General Confederation of Labor, to enforce compulsory arbitration, and to prevent functionaries from combining in labor unions, the Millerand government has virtually enacted a revolution in labor policy. If it succeeds, it will have definitely and perhaps permanently established the supremacy of the government over economic groups within its midst. To succeed, however, it seems certain that the government must give labor some assurance that its reasonable demands will be accorded through political means, and that it will secure some actual participation in government and industry.

The Millerand government toward this end introduced a far-reaching bill (June, 1920) governing the whole scope of the place of the government employee in public administration. This bill lays down the methods of employing and promoting government employees, which shall be by competition, examinations, and periods of probation. It declares that strikes are absolutely illegal in any of the public services. It provides that each public service is to have an administrative council, upon which government employees are to be represented. Grievances of employees may be brought to this council. It is also to serve as a body of promotion and of discipline. In fact, it is to give the government employee an actual part in the direction of the service to which he belongs. In order to unify the activities of these administrative councils, a superior administrative council is to be formed as a court of appeals.

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III

An extreme radicalism, however, has not been the sole distinctive feature of the program of the General Confederation of Labor. Its plan for the nationalization of the French railway system, on the contrary, seems to be a comparatively moderate effort toward social reform. This plan is so important not only from the labor standpoint, but from that of syndicalism and the railway question in general, that it warrants special attention.

The General Confederation of Labor insists that the railroads must be administered by "collectivity" and for the interests of the public, that the managers and personnel of every rank must be responsible for the management, and at the same time, that all must be interested in the financial return of the roads. The roads must be centralized in general direction; on the other hand, actual control must be decentralized, and responsibility placed on local groupings.

The General Confederation of Labor has drawn a distinction, as the guild socialists everywhere are now doing, between *étatisation* and *nationalisation*. *Étatisation* is state socialism—the centralized and autocratic direction of industry by an all-powerful and bureaucratic state. *Nationalisation*, on the other hand, is the direction of industry, itself owned by the nation, by experts and representatives of all interests—producers, consumers, employees and employers—all coöperating. Under the system of *étatisation* a ministry and a parliament would direct industrial enterprises with little skilled knowledge, and by juggling selfish, political interests. Under the new system of *nationalisation*, political parliaments are to surrender this power to highly technical and autonomous groupings invested with the power and ability efficiently to carry on industrial activities. Just how such a plan may work out, is shown by the organization which the General Confederation of Labor advocates for the French railway system.

According to its plan, the management and the administration of the roads must include representatives of (1) railroad labor organizations, (2) the General Confederation of Labor as well as producers' organizations, (3) the public, such as syndical

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chambers of industries, agricultural associations, and the National Federation of Coöperatives, (4) the government in the person of highly technical functionaries.

A council of central administration with 18 members is advocated, which shall be composed of 3 members chosen by the Federation of Railwaymen; 3 by the Organization of Railway Technicians; 3 by the General Confederation of Labor; 3 by the General Confederation of Employers; 3 by the National Federation of Coöperatives; 1 by the Confederation of Intellectual Workers or 1 by the French Touring Club, and 2 (as commissioners) by the government. At present, according to the General Confederation of Labor, it is impossible to interest workers in the efficiency and progress of the railway system so long as they have no interest in the management or in the returns of the roads. To give them a share in both, is not only industrial justice, it is urged, but will add to the productivity of the roads.

The General Confederation of Labor believes that the general direction of the roads should be centralized so as to avoid duplication. According to its plan, the state would place the general management of the roads in the hands of a *régie des chemins de fer*, which is equivalent to a joint stock company. At its head would be the central council of administration, composed as above, to which the railroad executives charged with the general direction of the roads, would be responsible. Beneath the central council, regional councils of administration are proposed, each composed of eleven members, chosen according to a system of professional representation. These councils will oversee the execution of measures decided by the council of central administration, such as the extension and operation of roads, the promotion of employees, etc. These regional councils are to operate the roads in their respective regions, while the council of central administration will coördinate and direct regional efforts.

Each one of these councils is to be supplemented by a representative assembly, the central council with a general assembly charged with examining and approving the acts of the central

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council; it will also fix financial programs and approve rates. The regional council is to be supplied with a regional assembly, composed of representatives of the following regional groupings: (1) skilled workmen, (2) industrial syndicates, (3) chambers of commerce and chambers of agriculture, (4) coöperative associations, (5) liberal professions, and (6) the Touring Club. This assembly will oversee the regional council; in addition it will select the representatives for the general assembly.

There are many objections to this plan of the General Confederation of Labor: it is ill-defined; there is an abundance of advisors and a dearth of actual executives; labor, although supposedly in a minority, is given directly or indirectly, an overlarge representation in managerial councils.

The government, responding to the plan of the General Confederation of Labor, itself introduced a railway bill calling for the reorganization of the roads. It suggested a supreme railway council with power to coördinate the different lines, to revise and standardize rates, and to frame all regulations. This council is also to be composed of representatives of professional interests: (1) the engineering and administrative staffs of the roads, (2) railway labor, (3) chambers of commerce, (4) Parliament, (5) the ministry. The profits are to be divided among the companies proportionally to the number of cars loaded and tonnage carried by each.

Both of these projects are of far-reaching significance, not only from the standpoint of railway administration (which it is beyond the competency of this article to discuss) but from the general question of the representation of labor in industry. It need scarcely be said that the attempt of the General Confederation of Labor to enforce its projected reforms upon the government by means of a general strike—by force rather than by parliamentary means—is an assault at the foundation of constitutional government. But aside from this, the General Confederation of Labor's plan for nationalization reveals the astonishing fact that this great labor organization, which throughout its entire history has worshiped the syndicalism of Georges Sorel, has at least temporarily abandoned its insistence on the

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abolition of the capitalist régime. If it limits its plans for the re-making of the social order to such schemes as its railway project, it will have admitted the necessity of all classes coöperating with each other, in the management of industry; for its plan calls, not for the complete direction of the roads by railway labor, as the revolutionists so often have demanded, but for their mere representation in directing bodies upon which every class—from capitalist to consumer—are to be included. Thus although the General Confederation of Labor has not yet deserted the doctrine of the general strike, it has apparently deserted the doctrine of the dictatorship of the proletariat and the extinction of the capitalist class. It is probable that the General Confederation of Labor is palliating its more radical members by speaking of these measures as "transitory." But it is more probable that the inauguration of labor representation in the actual management of industry—industrial democracy—will bring an end to the demand for the class struggle and the social revolution.

IV

Of the moral and religious problems confronting the French nation, the most outstanding is that of depopulation. A diminishing birthrate has caused particular anxiety on account of the rapid increases in the population of Germany. The government has resorted to many expedients to overcome this danger. Additional votes for children, to be cast by the father, have been advocated and have narrowly failed of being secured; medals to mothers—bronze for having reared five children, silver for eight, and gold for ten—are being awarded; material exemptions from taxation are made to fathers of large families; while bachelors must pay a surtax on their incomes of 25 per cent, and childless husbands 10 per cent. These rather humorous measures of "reform" only scratch at the surface of the real problem. The causes of a declining birthrate in France are economic and moral. The old system of marriage—the *mariage de convenance*—family alliances where young people, often strangers to each other, were forced into matrimony more as an affair of real estate than of

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sentiment—resulted in a countless number of unhappy unions. The stringency of divorce laws and the stern attitude of the Catholic Church toward divorce prevented many open separations. Consequently a great number of unhappy homes were nominally maintained intact, while illicit unions were often established. These conditions, together with the quest for luxury, naturally produced childlessness. Perhaps the majority of French homes are happy; but among those which are not, there is slight compunction at departing beyond the bounds of conventional morality. As a result, prostitution flourishes; the mistress is an institution; abortion is practiced unchecked; and "angel making" is an industry. The war severely shook the *mariage de convenance;* marriages of real sentiment became more frequent. This may bring a change for the better. Parliament is also realizing the need of suppressing neo-Malthusian practices. The greatest need of all, however, is the realization of the responsibility of the individual to the home and of the home to the nation. French experience has proved what many so-called radicals have recently attempted to deny: that the home is the foundation of the nation, and upon its existence national integrity depends.

The politico-religious problems in France center around the relation of the government to the Catholic Church. One of the most significant events of the last year has been the dispatch of M. Doulcet as *chargé d'affaires* to the Vatican, and the introduction of a bill by the government, asking credits for an embassy to the Holy See. Since 1905 France has maintained no official diplomatic relations with the Vatican. The change which the government is now trying to bring about is caused partly by considerations of foreign policy. But it is also caused by the desire to bury the anti-clerical quarrel which since the formation of the famous *bloc* during the Dreyfus affair, has kept France divided into two bitterly hostile camps. The separation laws of 1905 and 1907, it appears, removed clericalism as a menace to republican institutions. Despite this fact, successive anti-clerical governments have borne an antagonistic attitude not only toward the Pope but toward Catholicism in general which has naturally embittered many Catholics who have been patriotic

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Frenchmen; and has also prevented them from having a share in the administration of the government. The Millerand government decided to bring an end to such a situation, and has been therefore pursuing the policy of pacification which men such as Raymond Poincaré and Aristide Briand have been long advocating. The government hopes that the resumption of diplomatic relations with the Vatican will not only reconcile domestic differences between Clericals and anti-Clericals, but that it will lead to a recognition by the Pope of the present separation régime.

The second religious problem involves that of the congregations—special orders of the Church. Since the days of the French Revolution the government has attempted to control their numbers; despite this fact, in 1901 there were 19,424 congregations in France with 159,629 members; their real property was valued at ninety-two million dollars. These organizations were jealous in propagating the Catholic cause, and they were well organized. The fact that they were largely teaching orders, in charge of the education of many Catholic children, gave them a tremendous influence which they were not slow in using to attack the republic and to advocate the establishment of a clerical monarchy. The struggle against the religious and educational activities of the congregationists was nominally ended by the passage of the Associations Law of 1901. This law provided that no congregation could be formed without an authorizing law, and that those legally constituted should be subject to many restrictions. As a result, 17,000 unauthorized congregations were dissolved; and many famous orders and monasteries were closed, and monks driven into foreign countries. In 1914 one of the most stirring features of the declaration of war was the return of thousands of these monks, to enlist as defenders of the country which had treated them so harshly.

In a speech made in Paris, in November, 1919, M. Millerand demanded a readjustment of the relations of the government and the congregations. Quoting a statement he made in 1917, he said, "it seemed to me morally impossible that, the war ended, we should lead the members of the congregations back to the frontier after they had crossed it to take part in common dangers with their French brothers.

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"What I said then, I repeat today. I have changed neither thought nor opinion. I ask simply that religious or non-religious interests should have the same right of association, under the law, to defend and propagate their opinions; but that, as other citizens, religious as well as anti-clerical advocates should realize, especially when they teach, they must never forget that the school is sacred, that it shelters young men who must not be given over to political enterprises, and that the state has not only the right but the duty of entering all the schools, private or public, to assure itself that they conform themselves to public law and morals." Thus it appears that M. Millerand has pledged himself to readjust another political difficulty with the Church.

Closely connected with the matter of the congregations is that of the schools. Here two questions are involved. The Catholic Republicans, represented by the *Libérale Action Populaire*, have insistently demanded that they should not only have the right to send their children to Catholic schools—a right which they now possess—but that the government should support these schools. In other words, they advocate the proportional division of school funds among different sects, in order that each may educate its own children according to the beliefs of their parents. It is very unlikely that such a demand will ever be granted. If the Catholic elements in France ever become strong enough to pass such a reform, they will be strong enough to give the entire public school system a Catholic imprint. Once in power, they would surely do the latter rather than the former.

Diametrically opposed to the projects of the Catholic Republicans, many Radical-Socialists have demanded the abolition of all private church schools, and the compulsory attendance of every child at a public school from which clerical and religious influences of every nature should be rigorously excluded. They have not been loud in this demand for they realize that a state monopoly of education is at this time impossible. This was the position taken by M. Brard at the Radical congress of Pau in 1913. For that reason he urged the passage of a law which, instead of providing for the total suppression of the *école libre*, should stipulate that in every commune where public

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schools are sufficient to handle the children of the community, no private school can be opened without the authorization of the minister of public instruction. The congress voted a proposition which would place all the Catholic schools under strict government supervision. Despite the attacks of the Radicals, it is probable that "liberty of education" will be maintained, and that the church school will continue to exist, subject to rigid government inspection.

V

The most stupendous task which confronted the French Parliament of 1920 was the liquidation of the financial problem. On March 29, 1920, M. Marsal made a speech before the chamber showing the difficulty in which France found herself. He estimated the 1920 budget as follows:

	francs
Ordinary budget	17,800,000,000
Extraordinary budget:	
First section	6,600,000,000
Second section	952,000,000
Expenses recoverable from Germany	22,000,000,000
Increase in debt	3,000,000,000
Total in round numbers	50,500,000,000
Resources:	
Present taxes	11,000,000,000
New taxes	7,000,000,000
Liquidation of war material	3,000,000,000
	21,000,000,000
New loans (to cover the amounts eventually recoverable from Germany)	21,000,000,000
Total resources	42,000,000,000
Deficit	8,500,000,000
	50,500,000,000

The situation facing Parliament, therefore, was an actual deficit of 8½ milliard francs, which could be raised only by new taxes, and 21 milliards which must be raised by new loans. This latter amount however, is eventually to be paid back by Germany,

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as it goes toward reconstruction work. To raise 8½ milliards in new taxes was an enormous task, in the light of the taxes already existing. Nevertheless, the French Parliament accomplished it by the passage of the finance law, promulgated June 26, 1920. The details of the bill need not be discussed. But the additional sum was provided for by raising the rates of existing taxes, and by instituting a new tax—a tax on business figures, which is itself supposed to bring in over 6½ milliard francs. Twenty-two per cent of these new resources is to come from taxes on acquired wealth; 78 per cent from taxes of consumption. Thus it seems that France has sacrificed modern principles of taxation in order to raise money in the quickest and the easiest way possible. At any rate, the new financial legislation has placed an average burden of 550 francs upon each inhabitant. The income tax rates illustrate the increased charge on French citizens. On an income of 600,000 francs which, according to the present rate of exchange would be about $50,000, a Frenchman with a family of three children would have to pay an annual tax of about $30,000, or over half of his income. A New York taxpayer, on the other hand, with a similar income would pay (in federal as well as state taxes) only a little more than $7,000. Thus the Frenchman pays about four times the taxes of an American in a similar position. Such a comparison may give an idea of the sacrifices which the people of France are undergoing largely to repair costs which were inflicted by Germany. The passage of the Finance Law of June 26, 1920 is a remarkable achievement; and it is one of the most stimulating indications that France is on the road to economic and political recovery.

In view of the recent financial conference at Brussels and of the campaign carried on in Allied countries against French financial policy, it is well to state the French side of the argument. This has been ably done by William Oualid, in an article in *L'Europe Nouvelle* (October 3, 1920) entitled "The Taxing Capacity of France." Before the war the wealth of France was estimated to be about 240 milliards. The national income was placed around 27 milliards. The government levied taxes upon this income amounting to about 4 milliards, or 15 per cent.

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During the war the national income was greatly increased by profits, salaries and inflation in general; but it was diminished by the damages inflicted on the devastated regions and by the loss of investments in foreign countries, notably Turkey and Russia. Estimating these various factors, it seems that the national income may have increased 200 per cent and at the present time may even amount to 75 or 80 milliards. If this generous figure be accepted, the French government today takes about 25 per cent of the national income in taxes, whereas before the war it took only 15 per cent.

A more important consideration is the loss of men and the consequent diminution of taxable population. Before the war the population of France was about 39,000,000. The war killed a million and a half; and it indirectly reduced the entire population, for in the 77 non-invaded departments, between 1914 and 1919, there were 1,389,916 more civilian deaths than births. As a result, the population of France today is but 36,000,000. This condition is even worse when the actual taxpaying population is considered. Before the war there were 11,700,000 heads of families, 1,900,000 bachelors above the age of 25, and as many unmarried women—making a total taxable adult population of 15,500,000. In 1913 the per capita tax was about 108 francs; the tax per taxable adult was about 270 francs. Today the individual charge has quadrupled. Each survivor, man, woman, or child, must pay an average tax of 527 francs. Since the number of taxable adults has been reduced during the war by a million and a half, this latter class must pay an average annual tax of 1350 francs.

Such is the sacrifice the French taxpayer is compelled to undergo. How does it compare with that of the Englishman? At the beginning of the war the national wealth of the United Kingdom was about 425 milliards and its annual income, 44 milliards. England was not invaded and her population was not diminished to the same extent as France. During the last year there were 228,000 more births in England than deaths. Today the sum total of English taxes amount to but 19.4 per cent of the national income, while the per capita tax in England

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is about 565 francs and the average tax per taxable adult is 1180 francs, nearly 200 francs less than that borne by the Frenchman. These figures are of course approximate; but they suffice to answer the persistent charges that France is trying to shift the financial burdens of the war to unborn generations.

No one will deny that France has the moral right to demand that Germany repair the civilian damages which she inflicted. The reason why France has stood out against fixing the amount of the indemnity is because she feels that England and Italy, in order to bring the economic world "back to normalcy," will permit its reduction to a point far below that to which France is entitled. It is a significant fact that the French government has already advanced over 20 milliards to the devastated regions, an amount greater than the whole estimate of the French damage made by J. Maynard Keynes in his *Economic Consequences of the Peace*. "Liberals" may cry "corruption" in reply to this fact, but those who have seen the devastated areas of France will realize that the material cost of replacing them is nearly incalculable.

Insistent voices in England and America have suggested that France remit a portion of her financial claims against Germany; and England to the alarm of French publicists, has already waived some of her rights, under paragraph 18 of Annex II of Part VIII of the treaty, to sequestrate goods of German merchants in England on the indemnity account. But France has always brought an effective reply: "We cannot forego a single franc which Germany owes us until England and America agree to waive the debt which we owe to them. If you insist on payment, we must insist upon the payment of the German indemnity." So far no one in authority in England and America has suggested that the advances which these countries have made to France, be cancelled. Liberalism is a shoe which America should first try to fit on her own foot. Indeed when France is reproached for her intransigeance in regard to the treaty, she must be grimly reminded of that Spanish proverb: "God protect me from my friends and I will take care of my enemies."

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The legislative measures discussed in the course of this paper are a few examples of the strenuous efforts which the French parliament is making to reconstruct the nation. The Millerand ministry and the first session of the new Parliament have already accomplished much. As a result, the pessimism which, during the Peace Conference, beclouded the future, is giving away to the exuberant hope that it will not be long before France will have regained her grandeur of the past.

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CONSTITUTIONAL LAW IN 1919–1920. II

THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THE OCTOBER TERM, 1919

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IV. THE TREATY-MAKING POWER

From the historical point of view no more interesting case was decided last term than that of Missouri v. Holland,[43] in which a bill in equity brought by the state of Missouri to prevent a game warden of the United States from attempting to enforce the Migratory Bird Treaty Act of July 3, 1918,[44] and the regulations made by the secretary of agriculture in pursuance of this act was finally dismissed, Justices Van Devanter and Pitney dissenting without opinion.

The objectors to the statute and the underlying treaty based their argument upon the Tenth Amendment,[45] supplemented by the proposition that the control of migratory birds within their respective limits is a power reserved to the states,[46] and from these premises they proceeded to draw the conclusion that "what an act of Congress could not do unaided, in derogation of the powers reserved to the states, a treaty cannot do." But, Justice Holmes answers in his opinion for the

[43] 252 U. S. 416.

[44] The act gives effect to the Treaty of August 16, 1916, between the United States and Great Britain, which pledges this government and the Canadian government reciprocally to protect certain game birds making seasonal migrations from the United States into Canada and vice versa. Earlier than this Congress had, by the Act of March 4, 1913, attempted to extend the protection of the national government over migratory game birds, but the act had been held void by a state and one or two federal courts, passing muster, however, in another. It was before the Supreme Court in Cary v. So. Dak., 250 U. S. 118, but for construction only. See the present writer 14 *Michigan Law Review*, 613 ff.

[45] "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people."

[46] Citing Geer v. Conn., 161 U. S. 519.

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court, the treaty-making power is expressly delegated to the United States,[47] treaties made under the authority of the United States are the supreme law of the land,[48] and by article 1, section 8, Congress may pass all laws necessary and proper to carry valid treaties into effect.[49] He then proceeds:

"Acts of Congress are the supreme law of the land only when made in pursuance of the Constitution, while treaties are declared to be so when made under the authority of the United States. It is open to question whether the authority of the United States means more than the formal acts prescribed to make the convention. We do not mean to imply that there are no qualifications to the treaty-making power; but they must be ascertained in a different way. It is obvious that there may be matters of the sharpest exigency for the national well-being that an act of Congress could not deal with, but that a treaty followed by such an act could, and it is not lightly to be assumed that, in matters requiring national action, 'a power which must belong to and somewhere reside in every civilized government' is not to be found.[50] . . . . The treaty in question does not contravene any prohibitory words to be found in the Constitution. The only question is whether it is forbidden by some invisible radiation from the general terms of the 10th Amendment. . . . . Here a national interest of very nearly the first magnitude is involved. It can be protected only by national action in concert with that of another power. The subject-matter is only transitorily within the state, and has no permanent habitat therein. But for the treaty and the statute, there soon might be no birds for any powers to deal with. We see nothing in the Constitution that compels the government to sit by while a food supply is cut off and the protectors of our forests and of our crops are destroyed. It is not sufficient to rely upon the states. The reliance is vain, and were it otherwise, the question is whether the United

[47] Article 2, section 2, which reads: "He [the President] shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur."

[48] See note 28, *supra*.

[49] "The Congress shall have power . . . to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

[50] Citing Andrews v. Andrews, 188 U. S. 14.

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States is forbidden to act. We are of opinion that the treaty and statute must be upheld."[51]

These rather sweeping propositions raise some interesting questions with reference to Part 13 of the pending Peace Treaty with Germany. This division of the treaty provides for an International Labor Conference whose "draft conventions" or "recommendations," as the case may be, must be submitted to the proper authorities of the member states for action upon them within a year. But "in the case of a federal state," the document reads, "the power of which to enter in conventions is subject to limitations, it shall be in the discretion of that Government to treat a draft convention to which such limitations apply as a recommendation only." Supporters of the league and the treaty in the senate and elsewhere have been at pains to explain that this provision was inserted at the particular instance of the United States and to meet the requirements of the United States Constitution. It may, however, be fairly asked, with Missouri v. Holland in mind, whether the power of the national government to enter into conventions on labor is "subject to limitations." And if it is not, we are confronted with the further question, whether we should like to see the treaty-making power and Congress, either separately or conjointly, vested by an unqualified ratification of Part 13 of the treaty with the power of enacting for the United States such recommendations as the International Labor Conference may elect to make from time to time. Unquestionably Missouri v. Holland makes more important than ever the political check which resides in the senate on the treaty-making power.[52]

[51] Among the parts omitted in the above quotation from the opinion is the following striking passage: "We may add that when we are dealing with words that also are a constituent act, like the Constitution of the United States, we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. It was enough for them to realize or to hope that they had created an organism; it has taken a century and has cost their successors much sweat and blood to prove that they created a nation. The case before us must be considered in the light of our whole experience, and not merely in that of what was said a hundred years ago." Among the cases cited by Justice Holmes to demonstrate that treaties otherwise valid may override state power are Baldwin v. Franks, 120 U. S. 678; Hopkirk v. Bell, 3 Cranch 454; Ware v. Hylton, 3 Dall. 199; Chirac v. Chirac, 2 Wheat. 259; Hauenstein v. Lynham, 100 U. S. 483; Geofroy v. Riggs, 133 U. S. 258; Blythe v. Hinckley, 180 U. S. 333; Wildenhus's Case, 120 U. S. 1.

[52] The case has another interesting aspect. "The ground of the bill is that the statute is an unconstitutional interference with the rights reserved to the states

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V. ADMIRALTY JURISDICTION

In Knickerbocker Ice Company v. Stewart[53] the Act of Congress of October 6, 1917, permitting the application of workmen's compensation laws in the several states to injuries occurring within the admiralty and maritime jurisdiction was held void. The decision rests upon the following propositions: (1) that the Constitution approved the system of maritime law "coextensive with and operating uniformly in the whole country;"[54] (2) That while Congress was given the power to legislate in respect to this system, such power must not be used in a way to interfere with the uniformity which the Constitution sought to secure; (3) that "Congress cannot transfer its legislative powers to the states."

The historical accuracy of the first point is open to serious question. The second point confuses two quite different matters. For while it was undoubtedly the intention of the Constitution to transfer the power to lay down the maritime law for the country from the states to Congress, there is nothing in the Constitution to indicate that the rules enacted by Congress within this field must be the same for all sections of the country, and the presumption must be, accordingly, that Congress was clothed with full legislative discretion in the matter. Nor is the third point more persuasive. The act here held void did not attempt a transference of legislative power either in the sense of a permanent abdication of power, since it may be repealed at any time, nor yet, necessarily, in the sense of an avoidance of responsibility. It presumably represented the deliberate judgment by Congress as to

by the Tenth Amendment, and that the acts of the defendant, done and threatened under that authority, invade the sovereign right of the state and contravene its will manifested in statutes. The state also alleges a pecuniary interest, as owner of the wild birds within its borders and otherwise, admitted by the government to be sufficient, but it is enough that the bill is a reasonable and proper means to assert the alleged quasi sovereign rights of a state. Kansas v. Colorado, 185 U. S. 125; Georgia v. Tennessee Copper Co. 206 U. S. 230; Marshall Dental Mfg. Co. v. Iowa 226 U. S. 460." All of which seems to leave very little of the doctrine of "political questions" as applied in Georgia v. Stanton, 6 Wall. 50.

[53] 253 U. S. 149, decided May 17. The act under review was passed to remedy the effect of Southern P. Co. v. Jensen, 244 U. S. 205. See Professor Powell's review of the latter case in 12 *American Political Science Review*, 43.

[54] Citing the Lottawanna, 21 Wall. 558. All that the Constitution says is that "the judicial power shall extend . . . to all cases of admiralty and maritime jurisdiction," article 3, section 2. See also note 49, *supra*.

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what was best for the situation dealt with,[55] and is certainly a far less striking delegation of power to the states than that which was upheld in the Clark Distilling Company cases[56]—to say nothing of the sweeping delegations of legislative power to executive authorities which have been sustained in recent years.[57] On both these accounts the dissenting opinion of Justice Holmes, speaking for himself, and Justices Pitney, Brandeis and Clarke, has much the better of the argument.[58]

VI. DUE PROCESS OF LAW, MISCELLANEOUS

1. Judicial Procedure

Several decisions deal with the privileges of accused persons.[59] We learn that the powers of the grand jury to investigate are original and

[55] Justice McReynolds evidently recognizes the force of this presumption and endeavors to meet it in the following words: "Neither branch of Congress devoted much debate to the act under consideration—altogether, less than two pages of the Record (65th Cong., pp. 7605, 7843). The Judiciary Committee of the House made no report; but a brief one by the Senate Judiciary Committee, copied below, probably indicates the general legislative purpose. And with this and accompanying circumstances, the words must be read." This is a novel type of argument for this kind of case, though, in view of the flexibility of the modern test of "delegation of legislative power," it may be necessary and valid.

[56] 242 U. S. 311. See also Professor Powell's review of the case in 12 *American Political Science Review*, 19 ff.

[57] The leading case is United States v. Grimaud, 220 U. S. 506. None of the sweeping delegations of power by Congress to the President during the war have been disturbed by judicial decision. Cf. Fairlie on "Administrative Legislation," in *Michigan Law Review*, January, 1920.

[58] Justice Holmes makes the point in his dissenting opinion, that the act might have been easily construed so as to avoid the argument against delegation of legislative power, by confining the words "rights and remedies under the Workmen's Compensation Law of any state" to refer solely to laws existing at the time of the passage of the act of Congress. The origin of the argument which Justice Holmes thus endeavors to meet is to be found in Justice Curtis's opinion in Cooley v. Board of Wardens, 12 How. 299. It may be suggested that, as Congress's legislative powers develop, it will be increasingly necessary for it to take account of local differences and necessities.

[59] The Fourth, Fifth and Sixth Amendments are the ones involved. The first reads thus: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

Amendment Five reads thus: "No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury,

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not dependent for their exertion upon the approval or disapproval of the court;[60] that it is valid to try several defendants together and treat them as a single defendant for the purpose of peremptory challenges;[61] that a person found guilty of murder and sentenced to life imprisonment is not placed twice in jeopardy if on a second trial, the first having been reversed on writ of error sued out by the accused, he is again found guilty, and then sentenced to death.[62] Also, it appears, no self-incrimination results from the use of letters which were written by accused after his crime and which came into possession of the prison officials under established practice reasonably demanded for the maintenance of discipline.[63]

A more notable case in the same field is that of Silverthorne Lumber Company v. United States.[64] Representatives of the department of justice arrested the two Silverthornes, and, while they were detained, went "without a shadow of authority" to the office of the Silverthorne Company and made a clean sweep of all books, papers and documents there found. Later an order was issued for the return of these, but meantime the government representatives had had them photographed. The question in the instant case was whether the two Silverthornes were in contempt of court for refusing to respond to a subpoena ordering them to bring the original documents into court, which subpoena had been sought on the strength of the knowledge gained in consequence of the illegal act of seizure. It was held that the government

except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

The words of the Sixth Amendment are as follows: "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

[60] United States v. Thompson, 251 U. S. 407.

[61] Stilson v. United States, 250 U. S. 583.

[62] Stroud v. United States, 251 U. S. 15.

[63] *Ibid.*

[64] 251 U. S. 385.

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cannot thus profit by its own wrong-doing.[65] The attention of Attorney General Palmer is respectfully drawn to this case.

Two cases have to do with the right of trial by jury in civil cases.[66] The first informs us that this right is not infringed in an action at law involving long accounts and many disputed items by the appointment of an auditor with power to make a preliminary investigation and report his findings for the aid of the jury.[67] The other determines that a federal court of appeals may not reverse a judgment rendered in a court below, upon a verdict for the plaintiff, without ordering a new trial.[68]

2. Administrative Procedure

Several cases are of distinct interest to the student of administrative law. In a Chinese deportation case the court set aside a decision of the secretary of labor denying admission into the United States to a Chinese claiming American citizenship, the decision being grounded on the defective form in which the record of testimony taken in the case had been brought before the secretary.[69] In another similar case it was

[65] Said Justice Holmes, of the Government's endeavor to avail itself of knowledge obtained by illegal means: "The proposition could not be presented more nakedly. . . . It reduces the Fourth Amendment to a form of words." The case should be collated with Adams v. New York, 192 U. S. 585 and Weeks v. United States, 232 U. S. 383. See also Flagg v. United States, 147 C. C. A. 367, 233 Fed. 481, which is cited by Justice Holmes with approval. In the instant case the Chief Justice and Justice Pitney dissented.

[66] The Seventh Amendment, which is here involved, reads: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no trial by a jury, shall be otherwise reëxamined in any court of the United States, than according to the rules of the common law."

[67] Re Walter Peterson, 253 U. S. 300. There were three dissents.

[68] Fidelity Title and Trust Co. v. Dubois Electric Co., 253 U. S. 212. The decision is principally interesting as showing that Slocum v. N. Y. Life Ins. Co., 228 U. S. 364, now has the approval of the entire court.

[69] Kwock Jan Fat v. White, 253 U. S. 454, decided June 7. A closing paragraph of Justice Clarke's opinion for the unanimous court deserves quotation: "The Acts of Congress give great power to the Secretary of Labor over Chinese immigrants and persons of Chinese descent. It is a power to be administered, not arbitrarily and secretly, but fairly and openly, under the restraints of the tradition and principles of free government applicable where the fundamental rights of men are involved, regardless of their origin or race. It is the province of the courts, in proceedings for review, within the limits amply defined in the cases cited, to prevent abuse of this extraordinary power, and this is

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held that a Chinese returning to the United States may not be deported, on the ground that his original entry was attained by fraud, without a judicial inquiry into his rights. The court emphasized the distinction between the case of a Chinese in the United States and one seeking to enter, a distinction which would seem to be applicable generally in deportation cases.[70]

3. Various

Caldwell v. Parker[71] determined that Congress did not by reënacting, in the Act of August 29, 1916, the Articles of War, vest the military courts in war time with exclusive jurisdiction to try and punish a soldier for the murder of a civilian at a place within the jurisdiction of a state and not within the confines of a camp or arsenal. Two cases emphasize the familiar distinction between a ministerial duty the performance of which may be compelled by writ of mandamus and a discretionary duty not thus compellable.[72] A case which originated in Oklahoma asserts the right of federal officials to invoke equitable relief against the enforcement of grossly unfair taxation of Indian lands.[73] Another case repeats the familiar doctrine that the power of removal, in the absence of statutory provision to the contrary, is an incident of the power to appoint and that the power to suspend is in turn an incident of the power to remove.[74]

possible only when a full record is preserved of the essentials on which the executive officers proceed to judgment. For failure to preserve such a record for the information, not less of the commissioner of immigration and of the Secretary of Labor than for the courts, the judgment in this case must be reversed. It is better that many Chinese immigrants should be improperly admitted than that one natural born citizen of the United States should be permanently excluded from his country." The practice indicated in Chin Yow v. United States, 208 U. S. 8, is specifically "approved and adopted."

[70] White v. Chin Fong, 253 U. S. 90. On the rights of resident aliens see further United States v. Wong Kim Ark, 169 U. S. 649.

[71] 252 U. S. 376.

[72] Houston v. Ormes, 252 U. S. 469, decided April 19, in which it was held that a suit against treasury officials to establish an equitable lien upon a fund appropriated by Congress for payment to a specified person is not a suit against the United States, being one to compel the performance of a ministerial duty; and United States ex rel. Alaska Smokeless Coal Co. v. Lane, 250 U. S. 549, in which the court refused a mandamus to the secretary of the interior to compel him to approve and pass applications for certain Alaska coal claims.

[73] United States v. Osage County, 251 U. S. 128. See in the same connection Heckman v. United States, 224 U. S. 413.

[74] Burnap v. United States, 252 U. S. 512, citing ex parte Hennen, 13 Pet. 230, and other familiar precedents.

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United States v. North American Transportation and Trading Company[75] establishes that when the government appropriates private property for public use under legislative sanction but without instituting condemnation proceedings, it impliedly promises to pay therefor and may be sued on its promise in the Court of Claims. Calhoun v. Massey[76] sustained the clause of the Omnibus Claims Act of March 4, 1915, which limits the compensation of attorneys in the prosecution of claims against the United States to twenty per cent of the amount collected, any contract to the contrary notwithstanding. Another case emphasizes the plenary authority of Congress over unincorporated territories.[77]

VII. STATUTORY CONSTRUCTION

The most significant case under this heading is that of the Federal Trade Commission v. Gratz,[78] which involved the important question of the meaning of the term "unfair methods of competition in commerce," as used in the Act of September 6, 1914. The court held that "it is for the courts and not the commission ultimately to determine" the content of these words, and further that "they are clearly unapplicable to practices never before regarded as opposed to good morals because characterized by deception, bad faith, fraud, or oppression, or as against public policy because of their dangerous tendency unduly to hinder competition or create monopoly." Upon this basis the court pronounced unfounded a complaint of the commission against respondents for refusing to sell cotton ties to purchasers declining to take a corresponding amount of cotton bagging. Justices Brandeis and Clarke dissented on the ground, stated by the former, that the only question before the court was whether, on the facts found by the commission, the method of competition condemned by it could be reasonably held to be unfair.[79]

[75] 253 U. S. 330.
[76] 253 U. S. 170.
[77] Public Utility Comrs. v. Yuchausti and Co., 251 U. S. 401.
[78] 253 U. S. 421.
[79] Justice Brandeis cites the power vested in the Interstate Commerce Commission to determine whether a preference granted by a railroad to a shipper or locality falls within the prohibition of "undue preferences." See Pennsylvania Co. v. United States, 236 U. S. 361.

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Two much touted cases under the Sherman Act,[80] in seeming imitation of the Irishman's twins, who reciprocally drowned out each other's cries so that total silence reigned, cancel one another, and thus leave us in our original Stygian darkness as to the practical import of that famous statute. One case under the LaFollette Act[81] informs us that seamen on foreign vessels are entitled, the same as seamen on American vessels, to demand and receive at any American port of lading or delivery one-half of the wages they already earned. The decision is evidently based on the assumption that—as the late Judge Gaynor once remarked—the act "means just what it says." More surprising is a holding that the Adamson Act does not in certain circumstances, forbid a contract for services at less price than the rates laid down in the act.[82] The case is further interesting for the summary statement of Justice Holmes of what was held in Wilson v. New.[83]

[80] U. S. v. U. S. Steel Corporation, 251 U. S. 417, and U. S. v. Reading Co., 253 U. S. 26. The decision in the earlier case was rendered by only four justices, Justices McReynolds and Brandeis not participating and Justices Day, Pitney and Clarke dissenting. In the Reading case the Chief Justice and Justices Holmes and Van Devanter dissented. Justice McKenna, who wrote the opinion in the Steel Corporation case, has thus the distinction of being the only member of the court to approve of both decisions. A third case arising under the act was U. S. v. Shrader's Sons, 252 U. S. 85, in which it was held that agreements to control resale prices violate the act, but that a manufacturer may nevertheless, refuse to deal with one who has failed to follow resale prices specified by him. The decision thus embraces in one holding Miles Medical Co. v. Park and Sons, 220 U. S. 373, and U. S. v. Colgate Co., 250 U. S. 300.

[81] Strathearn S. S. Co. v. Dillon, 252 U. S. 348.

[82] Fort Smith and W. R. Co. v. Mills, 253 U. S. 206. The agreement in question was between the receiver of an insolvent road and employees.

[83] The passage is as follows: "In Wilson v. New, 243 U. S. 332, 61 L. ed. 755, L.R.A.1917E, 938, 37 Sup. Ct. Rep. 298, Ann. Cas. 1918A, 1024, it was decided that the act was within the constitutional power of Congress to regulate commerce among the states; that since, by virtue of the organic interdependence of different parts of the Union, not only comfort but life would be endangered on a large scale if interstate railroad traffic suddenly stopped, Congress could meet the danger of such a stoppage by legislation, and that, in view of the public interest, the mere fact that it required an expenditure to tide the country over the trouble would not, of itself alone, show a taking of property without due process of law. It was held that these principles applied no less when the emergency was caused by the combined action of men than when it was due to a catastrophe of nature; and that the expenditure required was not necessarily unconstitutional because it took the form of requiring the railroads to pay more, as it might have required the men to take less, during the short time necessary for an investigation ordered by the law."

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Construction of the federal Employers' Liability Act has continued along the broad lines originally laid down by the court, and with the same diversity of result. When the act comes into competition with less liberal state laws a broad construction of it is beneficial, but when the contrary is the case—as it usually is nowadays—the result also is contrary.[84] The remedy, of course, lies with Congress. Finally, we learn that sheep are "cattle" within the meaning of section 2117 of the Revised Statutes, it having been so held by the courts and the administrative authorities for fifty years.[85] The decision is commended to the attention of the author of "Pigs is Pigs."

B. QUESTIONS OF STATE POWERS

I. PUBLIC PURPOSE IN TAXATION

The most important cases reviewing state laws have arisen in connection with taxation, and of these the most significant is that of Green v. Frazier,[86] in which the legislative program of the nonpartisan league of North Dakota, carrying with it such enterprises as a state bank, a state warehouse, elevator and flour mill system, and a state home building project, was sustained against the objection that it sought to authorize taxation for purposes not public, and therefore the

[84] The cases are as follows: Southern P. Co. v. Industrial Accident Commission, 251 U. S. 259: The work of an electric lineman in wiping insulators on one of the main electric cables of an interstate railway carrier was so directly connected with interstate commerce as to render the state law inapplicable. Philadelphia and Reading Railway Company v. Hancock, 253 U. S.: A member of a train crew operating a train of loaded coal cars from colliery to freight yard, both within the state was engaged in interstate commerce within the meaning of the federal act, although his duties never took him outside the state, it being shown that the ultimate destination of some of the cars was a point outside the state. Erie Railroad Company v. Collins, 253 U. S. 77: An employee of an interstate railway was engaged in interstate commerce within the meaning of the federal act, while starting the gasoline engine at a pumping station, which engine was used to pump water to be supplied to locomotives in whatever commerce engaged. Erie Railroad Company v. Szary, 253 U. S. 86: An employee of an interstate railway was engaged in interstate commerce within the meaning of the federal act when, having sanded the last of a series of locomotives and carried the ashes from the drying stove to the ashpit across the tracks, he was struck by a passing locomotive while on the way to get a drink of water.

[85] Ash Sheep Co. v. United States, 252 U. S. 159.

[86] 253 U. S. 233.

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taking of property without due process of the law. The court recited the fact that this rather ambitious program had been sanctioned "by the united action of the people of the state, its legislature, and its courts." For the rest, said Justice Day, who spoke for the unanimous court, "with the wisdom of such legislation and the soundness of the economic policy involved, we are not concerned. Whether it will result in good or harm is not within our province to inquire."[87]

II. TAXATION OF NONRESIDENTS

The conspicuous success, from the point of view of the tax-gatherer, at any rate, of the national income and inheritance taxes has stimulated the cupidity of the states and has brought them into frequent contact with the "privileges and immunities clause" of article 4 of the Constitution.[88] In Maxwell v. Bugbee[89] it was ruled that a graduated inheritance tax law, requiring that the rate of the tax be determined in the case of nonresident decedents by the total amount of property of such decedents both within and without the state was valid, although in the case of resident decedents the rate is determined by the amount of the property held within the state alone. The decision is based, so far as the "privileges and immunities clause" is concerned, on the proposition that the difference in the method of taxation "rests upon residence and not citizenship." The question whether it was fair to make it rest upon this basis is unfortunately left unanswered, wherefore three judges dissented. More satisfactory is the decision in Shaffer v. Carter,[90] holding that a state may tax nonresidents upon incomes derived from business done or property owned in the state and may confine their deductions from gross incomes to losses sustained in the state, though in the case of residents it allows all losses to be deducted. The difference thus made, the court points out, is not

[87] The doctrine of "public purpose" was introduced into the jurisprudence of the Supreme Court by Justice Miller, who brought it from Iowa, and was originally based on "general principles." See Loan Asso. v. Topeka, 20 Wall. 665. Later it was based on the "due process" clause of the Fourteenth Amendment: Fallbrook Irrig. Dist. v. Bradley, 164 U. S. 155. The instant case was preceded by Jones v. Portland, 245 U. S. 217, where the court sustained an act of the state of Maine authorizing the establishment of municipal fuel yards.

[88] Article 4, section 2, says: "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

[89] 250 U. S. 525.

[90] 251 U. S. 552.

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unfairly discriminatory, since residents are taxed on their net incomes from whatever source derived, whether within or without the state. Similarly Travis v. Yale and Towne Manufacturing Co.,[91] where it is further ruled that a state may legitimately confine taxation at the source to nonresidents, but that denial to nonresidents of the personal exemptions which are granted citizens is a denial to the former of privileges and immunities enjoyed by the latter, meets the demands of "the rule of reason."

III. TAXATION AND THE FOURTEENTH AMENDMENT

Several cases point out that the Fourteenth Amendment does not forbid double taxation any more than it forbids doubling the amount of the tax, short of confiscation.[92] A state may therefore tax its own corporations in respect of stock held by them in other domestic corporations, and this even though unincorporated stockholders are exempt.[93] Likewise a state may tax a corporation organized under its laws upon the value of its outstanding capital stock, although the corporation's property and business are entirely in another state.[94] Also a state may tax income received by residents from securities held for their benefit in another state.[95] On the other hand, the exemption of domestic corporations doing business without the state, from an income tax which domestic corporations doing business both within and without the state have to pay upon the proceeds of their total business, constitutes unfair discrimination against the latter class of corporations.[96] Finally Wallace v. Hines[97] points out some definite limitations to the

[91] Amendment Fourteen, section 1, reads, in part, as follows: "Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." These clauses were also invoked in the cases just reviewed in connection with article 4, section 2.

[92] 252 U. S. 60.

[93] Ft. Smith and W. R. Co. v. Ark., 251 U. S. 532. Four justices dissented, without opinion.

[94] Cream of Wheat Co. v. Grand Forks County (No. Dak.), 253 U. S. 325. The decision should be compared with Union Refrigerator Transit Co. v. Ky., 199 U. S. 194.

[95] Maguire v. Trefrey, 253 U. S. 12.

[96] Royster Guano Co. v. Va., 253 U. S. 412.

[97] 253 U. S. 66. The headnote of the case furnishes us the important details: "A state may not, consistently with the commerce and due process of law clauses of the Federal Constitution, fix the value of the property of foreign in-

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application of the "unit of use" rule in the taxation by a state of foreign interstate railway companies doing business in the state.[98]

IV. REGULATION OF PUBLIC UTILITIES

Several cases dealing with the regulatory powers of the states in relation to public utilities reiterate or extend familiar principles, in interpretation of the "due process of law" clause of the Fourteenth Amendment, to wit: (1) In all cases where maximum rates set by a state public service commission are claimed by an owner to be confiscatory, the state must provide a fair opportunity of submitting the issue to a judicial tribunal for determination upon its own independent judgment of both the law and the facts.[99] (2) Every part of a railway system over which a passenger is entitled to ride must be included in the computation to determine whether a given rate is profitable, and the passenger service, including sleeping car, parlor car and dining car service, must be treated as a whole.[100] (3) Railway companies may not be compelled by a state administrative order to install cattle weighing scales at stations to which cattle are shipped, it having been shown that such scales have no direct part in transportation and indeed have come to be used, where they have been installed, not by shippers

terstate railway companies for the purpose of levying a special excise tax upon the doing of business in the state by taking the total value of the stock and bonds of each railway company and assessing the proportion of this value that the main track mileage bears to the main track of the whole line, where, by reason of topographical conditions, the cost of the lines in that state was much less than in other states, and the great and very valuable terminals of the railways are in other states, and where the valuations as made include such items as bonds secured by mortgage of lands in other states, a land grant in another state, and other property that adds to the riches of the corporation, but does not affect that part of the railway in the state."

[98] For other cases dealing with the taxing power of the states, see (v), just below.

[99] Ohio Valley Water Co. v. Ben Avon Borough et al. 253 U. S. 287. The principal cases cited for the decision were Missouri P. R. Co. v. Tucker, 230 U. S. 340, and Wadley So. R. Co. v. Ga., 235 U. S. 651. The dissenting opinion of Justice Brandeis, for himself and Justices Holmes and Clarke, is based on the different rule which obtains for the findings of the interstate commerce commission. See Interstate Com. Comsn. v. Union P. R. Co., 222 U. S. 531. In Oklahoma Operating Co. v. Love, 252 U. S. 331, decided March 22, a rate enforcing penalty clause was set aside, on the basis of Ex parte Young, 209 U. S. 123. The decision was unanimous.

[100] Groesbeck v. Duluth, S. S. and A. R. Co., 250 U. S. 607.

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but by buyers and sellers of cattle.[101] (4) A milling company cannot be compelled to continue the public operation of a railroad at a loss; if the railroad continues to exercise its charter rights, it may be required to perform its charter obligations, even at a loss, but it is free to stop its losses by stopping its business.[102] (5) An oil pipe line, constructed solely to carry oil for particular producers under private contract, cannot be converted into a public utility by legislative fiat, otherwise private property might be taken without just compensation; but a pipe line voluntarily devoted by the owner to the use of the public is a public utility and subject to regulation as such.[103] (6) If a city wishes to clear space for the construction of a street lighting system of its own by removing the instrumentalities of a privately owned system occupying the streets under legal franchise, it must make compensation for the rights appropriated, since it is not acting for the public health, peace or safety, but in a proprietary or quasi-proprietary capacity.[104]

V. POLICE POWER, EMINENT DOMAIN

Outside the cases just mentioned, the "due process of law" clause furnishes the basis of decision in surprisingly few cases. From one such case we find that the state may abolish the defence of contributory negligence, not only in employers' liability cases, but generally.[105] From another we learn that the Fourteenth Amendment does not require a state to make loss of earning power the sole basis for a statutory compensation scheme for workmen who are injured without fault on the part of the employer, and that, accordingly, whether allowance should be make for facial or head disfigurement is a question for the state alone to determine.[106] Still another decision upholds the right of the state to forbid persons from soliciting employment in the prose-

[101] Great Northern R. Co. v. Cahill, 253 U. S. 71, decided on the basis of Great Northern R. Co. v. Minn., 238 U. S. 340.

[102] Brooks Scanlon Co. v. R. R. Comsn., 251 U. S. 560, citing particularly Northern P. R. Co. v. No. Dak., 236 U. S. 585.

[103] Hays v. Seattle, 251 U. S. 233.

[104] Los Angeles v. Los Angeles Gas and E. Corp., 251 U. S. 32. The case should be compared with Hardin-Wyandot Lighting Co. v. Upper Sandusky, *ibid.*, 173. For the origin of the distinction here made between different branches of the police power, see New Orleans Gas Co. v. La. Light Co., 115 U. S. 650.

[105] Chicago, R. I., and P. R. Co. v. Cole, 251 U. S. 54.

[106] New York C. R. Co. v. Bianc, 250 U. S. 596.

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cution or collection of claims, including claims for personal injury;[107] while another reiterates familiar doctrine with reference to the power of eminent domain. The necessity and expediency of a taking where the purpose is public are legislative questions, and all that due process of law requires is that the owner have opportunity to be heard on the matter of compensation and that the compensation awarded be paid without unreasonable delay, not necessarily before the taking.[108] Several special assessment cases add little to learning on that topic.[109]

VI. THE "COMMERCE" CLAUSE

In enforcing the commerce clause as a limitation on the taxing-power of the states, the court finds a surprising difference between soft drinks and gasoline, with the result that, while a nonresident manufacturer of the former may be required to take out a wholesaler's license for the privilege of selling goods brought across state lines and delivered in original unbroken cases,[110] a tax on the business of selling gasoline in the tank cars or other original packages in which it was brought from without the state is void.[111] It is also under the commerce clause that a Jim Crow car law was sustained against a company whose principal business is the carriage of persons across the Ohio River between Cincinnati and Kentucky towns; but it must be admitted, that the dissenting opinion of Justice Day, for himself and Justices Van Devanter and Pitney, has much the better argument.[112] Another decision sustains the right of a state to stipulate the rates at which natural gas transmitted from without the state shall be furnished to

[107] McCloskey v. Tobin, Sheriff (Texas), 252 U. S. 107. As Justice Brandeis remarks in his opinion, "The evil against which the regulation is directed is one from which English law has long sought to protect the community through proceedings for barratry and champerty."

[108] Bragg v. Meaner, 251 U. S. 57.

[109] Branson v. Bush, 251 U. S. 182; Farncomb v. Denver, 252 U. S. 7; Goldsmith v. Prendergast Construction Co., *ibid.*, 12.—In Sullivan v. Shreveport, 251 U. S. 169, a municipal ordinance requiring street cars to be operated by both motorman and conductor during certain hours of the day was sustained. In Dunbar v. New York, *ibid.*, 516, a provision of the municipal charters imposing a lien on landlord's premises for water supplied by city to tenant was upheld.

[110] Wagner v. Covington, 251 U. S. 95, citing Brown v. Houston, 114 U. S. 622.

[111] Askren v. Continental Oil Co., and accompanying cases, 252 U. S. 444. The decision cites Standard Oil Co. v. Graves, 249 U. S. 389, where an act of California was set aside as not an inspection law.

[112] South Covington and C. Street R. Co. v. Ky., 252 U. S. 399.

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local consumers, but only till Congress acts in the exercise of its superior authority[113]—a qualification which obviously opens up interesting possibilities. Several cases grew out of conflicts between state and federal regulations, but disclose no new principle.[114]

VII. "OBLIGATION OF CONTRACTS," "FULL FAITH AND CREDIT"

Of the ten cases which invoked the "obligation of contracts" clause, at least half illustrate the familiar doctrine of "strict construction" laid down in the Charles River Bridge case in 1837.[115] Indeed the

[113] Pennsylvania Gas Co. v. Public Serv. Comsn., 252 U. S. 23.

[114] Pennsylvania R. Co. v. Public Serv. Comsn., 250 U. S. 566 (State cannot regulate the use of caboose cars and mail cars, as end cars, the interstate commerce commission having done so); Postal-Teleg. Cable Co. v. Warren-Goodwin Lumber Co., 251 U. S. 27 (State cannot invalidate contract limiting liability of telegraph company for error in sending unrepeated interstate message, Congress having occupied the field by the Act of June 18, 1910). See also note 84, *supra.*

[115] Bank of Oxford v. Love, 250 U. S. 605: The state has the right to provide for reasonable bank examination by state officers of a bank which has the power under its charter to make rules not in conflict with the Constitution of the United States or of the state. Oklahoma R. Co. v. Severns Paving Co., 251 U. S. 104: A company which is obliged by its charter to pay for the paving of certain portions of the streets occupied by it may also be assessed by the municipality for other paving costs for benefits received. Pacific Gas and Electric Co. v. Sacramento, 251 U. S. 22: A street railway company may be required to sprinkle the surface of the streets occupied by its lines between the rails and tracks and for a sufficient distance beyond to keep the dust from being raised by the operation of its cars. Hardin-Wyandot Lighting Co. v. Upper Sandusky, 251 U. S. 773: The state may require chartered electric companies to obtain the consent of municipalities before erecting poles and wires in the streets thereof. Milwaukee Electric R. & Light Co. v. Wisconsin, 252 U. S. 100: A street railway company may be compelled to pave in asphalt upon a concrete foundation, though its charter required, in the absence of agreement with the city, only the same material as that last used, which in this instance was macadam. C. B. Munday, Trustee v. Wisconsin Trust Co., 252 U. S. 499: The obligation of contracts clause applies only to legislation subsequent in time to the contract alleged to be impaired. Producers Transportation Co. v. R. R. Commission, 251 U. S. 228: A common carrier cannot, by making contracts for future transportation, etc., prevent the state from exercising its power to regulate such carrier's rates. Hays v. Seattle, 251 U. S. 233: A statute which has the effect of repudiating an unfulfilled contract previously made with the state does not impair the obligation of the contract, since the obligation still remains and forms the measure of the contractor's right to recover damages from the state. Central of Georgia R. Co. v. Wright, 250 U. S. 519, sustained a tax exemption of a leased road on facts peculiar to the case. There were four dissents. Travis v. Yale and Towne Mfg. Co., *supra,* was also argued to some extent under the "obligation of contracts" clause.

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remarkable thing about most of these cases is that they ever came into court. Probably learned counsel would avail themselves of Falstaff's apology for purse-taking: "Tis no sin for a man to labor in his vocation." The single case involving the "full faith and credit" clause[116] establishes that a state cannot escape its obligation to enforce a judgment rendered by the court of another state by the easy device of denying jurisdiction of the subject matter to its courts.[117]

In conclusion, a few statistics for the term may be interesting. The court handed down opinions in 176 cases, of which 80, more or less, involve constitutional issues or near-constitutional issues. As writers of opinions for the court Justices Day and Holmes tied, each having 25 to his credit, while Justice Van Devanter, whose record is poorest in this respect, wrote but 11. Most of the others averaged about 20 each. Dissents were recorded in about 40 cases. Justice Clarke is apparently the most obstinate member of the bench, having notified his dissent in 19 cases, though Justice Pitney with 17 dissents is a close second. The most complaisant member, on the other hand, is the Chief Justice, who appeared as dissentient but 5 times. The constitutional cases frequently involved more than one topic of constitutional law. "Due process of law," in the sense of a general limitation to legislative power, was invoked in 30 cases, and in the procedural sense 7; the "commerce clause" in 11 cases, and always as restrictive of state power; the "obligation of contracts" clause in 10 cases. The most frequently recurring topic of all was, as usual, that of appeal and error, which sometimes drew constitutional issues in its wake, but usually of an uninteresting character. Aside from constitutional cases, those involving questions of statutory construction were most numerous and important.

[116] The clause reads: "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof."

[117] Kenney v. Loyal Order of Moose, 252 U. S. 411, decided April 19. The same day was also decided Canadian Northern Ry. Co. v. Eggen, 252 U. S. 553 in which it was held that a provision of the Minnesota statutes denying jurisdiction over causes of action arising outside the state which have lapsed under the laws of the place of action, did not infringe the "privileges, and immunities" clause of article 4, provided the foreign limitation, though shorter than that of Minnesota, was not unduly short.

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The outstanding result of the term's work for constitutional law is its emphasis upon the principle of the supremacy of national powers over conflicting state powers. This is the principle which Chief Justice Marshall labored so fruitfully, but which became obscured in the period following his chief-justiceship. In the field of commercial regulation it was definitely restored by the decision in the Shreveport case in 1916. This term it was reasserted in the field of the treaty-making power and in that of constitutional amendment. It is unlikely that it will ever again be lost to view.

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AMERICAN GOVERNMENT AND POLITICS

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Notes on Congressional Procedure. Rules of procedure in legislative bodies, once a matter of convenience, have now become weapons of political and personal warfare.[1] Nowhere is this more evident than in the American Congress. In the house of representatives individual members are ready to seize every opportunity afforded by the rules to make themselves prominent and embarrass those who have the pending measure in charge; and when action is to be taken by the house, guillotine is almost always used.[2] The proposed program is reported by the committee on rules and the house proceeds to a cut and dried decision determined upon by the leaders. There is no real deliberation. In the senate, the situation is different; inability to limit debate enables obstruction to be successfully resorted to by a few senators. For example, in the last session the budget legislation failed of passage on account of a filibuster, but the senate, while not reduced to the same degree of impotence as the house, is, nevertheless, very materially under the domination of the steering committee.[3]

[1] How the change came about in England has been very well described in A. A. Baumann, *Persons and Politics of the Transition*, pp. 27–30.

[2] "In the earlier Congresses," wrote Speaker Reed, "Members acted with the utmost deference to the wishes of the House. They refrained from making speeches, and withdrew motions if the sense of the House seemed manifestly against them. With such deference on the part of each member to the wishes of all, the House was slow to abridge the right of debate." *North American Review*, Vol. 150, p. 389. Calhoun declared that the previous question had been ordered only four times in twenty years. The changes in the procedure of the house of representatives are fully explained in Alexander, *History and Procedure of the House of Representatives*, ch. x.

[3] See for example, Senator McCumber's speech on May 20, 1920, *Congressional Record*, p. 7921. Senator Kenyon said that he did "not recognize the right of any small assembly of men on either side of the Chamber, after bills have been reported from committees to the Senate, following full discussion and consideration, to say that such bills shall not be considered by the Senate except as they may say." Senator Johnson spoke to the same effect. The chief objection seemed to be that the steering committee would give no opportunity for considering the Nolan-Johnson Minimum Wage Bill and legislation designed to regulate the meat industry. Senator McCumber made a spirited defence of the work of the committee.

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Congressional procedure is in such an unsatisfactory state that it may be worth while to discuss several phases of the work of the house of representatives during the session of 1919–20.

Keeping a Quorum. So much time was lost in roll calls during the session that there was some discussion among members of the house of representatives of reducing the number which must be present in the committee of the whole to constitute a quorum. The Constitution provides that a majority of the members of the house is necessary for a quorum, but most of the business is transacted in the committee of the whole and then only 100 members must be present. During the last session of Congress more than 100 points of no quorum required the loss of at least 50 working hours, and during the present Congress there have been 425 roll calls—the equivalent of 30 legislative days. Snap votes do not occur in the house of representatives; if a huge appropriation bill is passed with a score of members on the floor—and this frequently happens, no one making the point of no quorum—it is certain that it would be passed with everyone present. Consequently roll calls are forced to consume time, as a personal retaliation by some member whose amendment has not been accepted by the chairman of the committee in charge of the pending bill, or to get an audience for a speech.

Adjournment, also, was repeatedly forced during the last session on account of lack of a quorum. The *Record*, for example, shows that in a great many cases as the clock approached six, a Democratic member said: "Mr. Chairman, I think we need a new shift and make the point of no quorum." Sometimes the majority leaders accepted the challenge, had the roll called, and continued business for a while; more frequently they were unwilling, at such a late hour, to attempt to secure the necessary number of members and thus many times the wishes of one representative forced the adjournment.

The proposal which has been most discussed is to make fifty a quorum in the committee of the whole. This number can almost always be secured from the handful which remains in attendance on the floor of the house and those who loiter in the cloak rooms.[4] A better solution would seem to be an electric voting system or some simpler method of

[4] In the house of commons 40 is a quorum, and if this number is not present, the house adjourns. The six standing committees appointed under the 1919 rules of the house of commons (see *American Political Science Review*, Vol. 14, p. 471), consist of from 40–60 members, 20 being a quorum. One important measure—the Plumage Bill—failed of passage at the last session of parliament because a quorum could not be kept in the committee.

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recording the house than by having every name droned twice by a clerk. That the problem needs to be mooted is in itself a commentary on procedure in the house of representatives.

A small-sized filibuster—which was part of the celebration of Lincoln's birthday—shows what absurdities the procedure and temper of the house of representatives are sometimes responsible for. The Gettysburg speech had been read, and an hour or so had been consumed in listening to addresses on the life and work of Lincoln. Then the house resumed consideration of the Agricultural Appropriation Bill in committee of the whole house on the state of the union, with debate under the five-minute rule.

Towards the close of the session the point of no quorum was made on the ground that a new shift of members was necessary—a method frequently used, as already suggested, to force the leaders of the house to consent to an adjournment. This consent was not given and the roll was called. The chairman of the agricultural committee then moved that debate on the section under discussion close in ten minutes, but apparently the section was of some interest and several gentlemen desired to talk. This small minority proceeded to make the house divide eight times, with tellers appointed in each case, before this simple question of closing the debate could be determined. Amendments were offered to close debate in thirty minutes, twenty-five minutes, and at once, the latter amendment being carried. Three motions were made that the committee rise and tellers were in each case ordered. The last division disclosed only ninety-nine gentlemen voting, but the chairman counted himself and thus was able to avoid a point of no quorum and a roll call. The section went through unamended, with no further discussion, the committee rose, and the house adjourned.[5]

Debate under the Five-Minute Rule. Although on important decisions, the house is absolutely controlled as to method and result by a few leaders, in one respect, at least, the members have ample freedom and are not reluctant to take advantage of it. They insist on consuming a great deal of time in debate under the five-minute rule. During the last session Congressman Madden made an examination of the *Congressional Record*, as a result of which he declared that the time spent in general debate was decreasing while that under the five-minute rule was increasing; formerly, the membership apparently trusted the ability and wisdom of appropriation committees which framed their bills after weeks of study and did not wish to act independently unless some important

[5] *Congressional Record*, February 12, 1920, pp. 2897–2898.

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question of policy was involved. Formerly, also, debate under the five-minute rule on items in appropriation bills was participated in principally by members of the committee; now it is indulged in generally and ninety per cent of it is absolutely futile. The chief result is that the chairman of the committee having the measure in charge is forced to be on the lookout against hostile amendments and that much time is wasted.[6]

Taking the Fifty-eighth and Sixty-fourth Congresses and fourteen supply bills, Mr. Madden calculated that 84 additional working days—or three months—were required for the passage of the appropriations. "Surely one is warranted in the conclusion," he said, "that a potent reason for the increasing length of the sessions of Congress is too much 'liberalizing' of debate under the *pro forma* amendment;"[7] most of this

[6] Mr. Madden made an interesting analysis of the time consumed under the five minute rule on several appropriation bills as follows: Legislative Bill: Fifty-seventh Congress, 2 days; Fifty-eighth, 2 days; Sixtieth, 2½ days; Sixty-second, 5½ days; Sixty-third, 9½ days; Sixty-fourth, 6½ days. Agricultural Bill: Fifty-seventh, 1 day; Fifty-eighth, 1 day; Sixtieth, 5½ days; Sixty-second, 8 days; Sixty-third, 6⅝ days; Sixty-fourth, 12 days. Indian Bill: Fifty-seventh, 1½ days; Fifty-eighth, 1½ days; Sixtieth, 2 days; Sixty-second, 3 days; Sixty-third, 3½ days; Sixty-fourth, 4 days. (A legislative day was reckoned at five hours.)

When it is remembered that the rules of the British house of commons (proposed for the session of 1919) sought to reduce the time allowed for the business of supply from 20 to 12 days (see *The Constitutional Year Book*, 1920, pp. 158, 462, and *American Political Science Review*, Vol. 13, p. 253) the time required by the house of representatives seems extremely liberal, for Mr. Madden considered only 3 of the 14 appropriation bills. A comparison of different Congresses, however, should take into consideration the fact that the appropriations have vastly increased in amount.

[7] Mr. Madden gave the following figures on the increasing lengths of congressional sessions:

"During the Fifty-eighth, Fifty-ninth, Sixtieth, and Sixty-first Congresses, when the Republicans were in control, with Mr. Joseph G. Cannon, Speaker, the Congress was in session a total of 1,164 days, an average for each Congress of 291 days. The four so-called 'long' sessions during this period occupied 736 days, or an average of 184 days for each long session.

"During the Sixty-second, Sixty-third, Sixty-fourth, and Sixty-fifth Congresses, when the Democrats were in control of the House, with Mr. Champ Clark, Speaker, the Congress was in session a total of 2,156 days, an average for each Congress of 536 days. The four so-called 'long' sessions during this period occupied 1,227 days, or an average of 307 days for each 'long' session.

"Thus it will be seen that Congress was in session 992 days, or almost three years longer during Mr. Clark's Speakership than Mr. Cannon's.

"Not once during the period when the Democrats were in control did they succeed in passing all the appropriation bills by the beginning of the fiscal year

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is foreign to the pending question and, as before stated, in ninety per cent of the cases the bill is unamended.[8]

In order to show the absurd range which debate very often takes it may be worth while to outline briefly the proceedings on January 29, 1920, an urgent deficiency bill (H. R. 12046) being under discussion in the committee of the whole house on the state of the union.

for which the bills provided. This was due largely, in my judgment, to a misuse of the privilege of debate under the five-minute rule." *Congressional Record*, January 6, p. 1172.

In this connection the following sessional statistics of the house of commons are interesting (*The Liberal Year Book for 1920*, p. 136):

SESSION OF	DAY OF MEETING	DAY OF PROROGATION	DAYS HOUSE SAT	DIVISIONS	ADJOURNMENT OF HOUSE MOVED	CLOSURE	
						Times moved	Times carried
1901	Jan. 23	Aug. 17	118	482	9	82	74
1902	Jan. 16	Dec. 18	181	648	14	96	81
1903	Feb. 17	Aug. 14	115	263	3	20	13
1904	Feb. 2	Aug. 15	124	341	7	69	51
1905	Feb. 14	Aug. 11	114	364	9	61	45
1906	Feb. 13	Dec. 21	156	501	5	112	61
1907	Feb. 12	Aug. 28	131	466	3	66	45
1908	Jan. 29	Dec. 21	171	463	2	63	40
1909	Feb. 16	Dec. 3	179	920	2	157	135
1910	Feb. 15	Nov. 28	103	159	0	28	13
1911	Jan. 31	Dec. 16	172	451	1	90	65
1912–13	Feb. 14	Mch. 7, '13	206	605	6	107	67
1913	Mar. 10	Aug. 15	102	279	4	83	56
1914	Feb. 10	Sept. 18	130	214	3	46	25
1914–16	Nov. 11, '14	Jan. 27, '16	155	34	0	0	0
1916	Feb. 15	Dec. 22	127	67	0	0	0
1917–18	Feb. 7, '17	Feb. 6, '18	181	156	2	0	0
1918	Feb. 12	Nov. 21	113	95	1	0	0
1919	Feb. 4	Dec. 23	163	166	2	0	0

[8] For instances of the use of the point of order that appropriations were not authorized by law to strike out items of bills and to bar the addition of amendments on the ground that they were not germane, see Mr. Blanton's extension of remarks, *Congressional Record*, April 21, 1920, p. 6446 ff. These appropriations can be reinserted under the senate rules, however, and then the house is forced to accede to them. (For the new rules of the house which seek to prevent this see above, p. 671.) As has been said there is practically no amendment of appropriation bills except with the approval of the chairman of the committee having them in charge. The committee, furthermore, occupies most of the time during general debate—frequently with the discussion of irrelevant subjects—and debate under the five minute rule is in many cases shut off on a motion by the chairman of the committee. But for this form of guillotine Mr. Madden's 84 days would have been considerably increased.

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Mr. Luce spoke for thirty minutes and was allowed to extend his remarks in the *Record*. He discussed the enormous waste of the war, variations of the index figure for production in the United States,[9] personal extravagance, the high cost of living, currency inflation, the Federal Reserve Act, and the way to deal with profiteers. Mr. Heflin revised and extended his remarks (of ten minutes) on the iniquities of Wall Street and the Republican Party. The conditions of the treasury and the proposed anti-sedition law were considered by Mr. Stevenson and Mr. Blanton; each was allowed ten minutes, but their remarks were extended and the latter used eight pages of the *Record* with quotations from the hearings before the house committee on the judiciary and a bitter attack on Mr. Gompers' war record. Congressman Blanton was very much interested in Mr. Gompers and spoke on him a number of times during the session.

Mr. Byrns (for the minority) and Mr. Good (for the majority) then discussed the bill for an hour in general terms and debate was begun under the five-minute rule. The first section of the bill to be considered related to the bituminous coal commission. Mr. Caldwell moved to strike out the last word and defended himself from the charge that, on the outbreak of the war, he was opposed to paying the soldiers as much as $30 a month. This important question was also discussed by Mr. Little. Mr. MacGregor broadened the issue. He moved to strike out the *two* last words of the section and discussed the coal shortage in his neighborhood. Copies of the speech sent to his constituents would doubtless convince them that they were being adequately represented in Washington; certainly that their fears of being fuelless were sympathized with.

The chairman (of the committee of the whole) for some reason delayed recognizing Mr. Huddleston who retaliated by making a point of no quorum. Eighty-two members were present. A motion was made that the committee rise, but failed by 2 to 87. The delay in taking the vote and announcing the result afforded time for 16 additional gentlemen to come into the hall. They were at once counted and a quorum was present. Mr. Huddleston then spoke, with interruptions, on the soldiers' bonus. Mr. Good moved to close debate on the section.

[9] Economists will be interested to learn that this index figure varied as follows: 1913–100; 1914–104; 1916–109; 1917–112; 1918–113. No authority is given for the figures, and so it is doubtful whether Mr. Luce's index number will be a great find to the economists who are very anxious to have reliable production statistics.

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The next paragraph related to the council of national defense. Four pages are taken up with the debate on whether the paragraph was subject to a point of order on the ground that the deficiency was anticipated rather than actual; but the chairman of the committee ruled that deficiency meant a deficiency in an appropriation heretofore made. Three pages of the *Record* give the report of a debate which resulted in a minor perfecting amendment, and the discussion for the rest of the day was held rather closely to the subject matter of the bill. Vocational rehabilitation had been reached, and members could and did talk about justice to the returned soldier rather than deficiency appropriations. It must have been an edifying day for the galleries but can it be said that the house of representatives is a deliberative body whose function it is to legislate?[10]

Political Debate. Political speeches are frequently made on the floor of the house of representatives or published in the *Record* without being delivered. Sometimes they are on national politics; more often they deal with the speaker's own legislative record and are an appeal for votes. Reprints can be obtained at cost from the government printing office and mailed to constituents free of postage. There are only two objections, neither very weighty, to such a procedure: (1) since no public business is pending or being discussed, members lay themselves open to the charge of advancing their personal and party interests at government expense (not an unusual situation in Congress), and (2) unanimous consent of the house is necessary both to speak and to extend remarks in the *Record*.

During the last session the leaders of the house found a way to obviate these two difficulties and to have a great deal of political debate. They had the house discuss the work of the select committee on expenditures in the war department (H. Res. 78). On December 13 the committee on rules reported a resolution permitting the house to debate a report from the select committee (House Report No. 487) for four hours, divided equally between the majority and the minority and the debate confined to the subject matter of the report.[11] On a point of no quorum the roll was called and then the speaker pro tempore (Mr.

[10] The full report of the proceedings on this day which is not exceptional, only typical, will be found in *Congressional Record*, pp. 2341–2369.

[11] It is a commentary on procedure in the house of representatives that this stipulation—debate to be confined to the subject matter—is very frequently made. And even so, the rule is not interpreted very strictly and is often openly ignored.

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Hicks) ruled that a point of order against the resolution on the ground that it did not lead to the consideration of any proposed legislation or require any action by the house was not well taken. Immediately another point of no quorum disclosed only 125 members present and the roll was again called. During the thirty-four minutes of debate on the rule which followed, the roll was called three times on points of no quorum and once on a motion to adjourn with the yeas and nays recorded. In other words, six times as much time was spent in calling the roll as in debate. Discussion of the rule was continued until the next legislative day. During the twenty-six minutes of debate which remained, three roll calls were ordered, with a fourth on the adoption of the resolution. The four hours debate which the committee on rules proposal allowed ran over two days. Discussion was centered on eight war department contracts, out of 9553 which the committee had examined. It was asserted without contradiction that for the first time in history the house debated a report which required no affirmative action;[12] the purpose of the debate was purely political.

On March 5, 1920, the committee on rules again proposed that the house have a debate. The rule reported provided that the house should meet at 11 a.m., that there should be four hours of debate on another report from the committee on expenditures in the war department (House Report No. 637), and that three congressmen who were named in the rule should have leave to revise and extend their remarks without further permission from the house. It was doubtless feared that someone might object and that unanimous consent—which is the customary method of securing permission to publish unspoken speeches—would be refused. This was the first time, Congressman Clark, minority leader, declared, that the rules committee had undertaken to grant to a particular member the right to extend his remarks in the *Record*. It is not necessary to comment on a legislative assembly consenting to such a practice.

Debate on the rule was finished with only one roll call on its passage and the debate of four hours the next day—principally on the aircraft program and its failure—went its dreary way with only an initial point of no quorum and, later, a handful of members on the floor. But the report of the debate is voluminous and the reader has no way of telling what was said and what was inserted under leave to print.[13] Much of it was doubtless circulated during the campaign.

[12] See *Congressional Record*, December 13, 15, 16, pp. 547, 578, 689.
[13] *Ibid.*, March 5 and 6, pp. 4221, 4263.

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But debates without action did not satisfy the majority leaders. They desired that the war department investigating committee should show more results. Consequently on April 12 a new system was tried to get political capital from the committee's work. The select committee itself was empowered[14] to report a resolution (No. 515; House Report 816) directing the Speaker of the house "to refer to the Attorney General of the United States the testimony taken before the Select Committee on Expenditures in the War Department on the subject of camps and cantonments, together with the report of the said Committee and the minority views on that subject, with the request that the Attorney General institute investigations before grand juries for the purpose of indicting and prosecuting such persons as are guilty of criminal conduct and to institute civil suits for the recovery of any Government funds which have been fraudulently or illegally paid on account of such emergency construction work."[15]

Four hours of debate with only two points of no quorum being finished, the resolution was adopted by a vote of 299 to 4. A motion to recommit was allowed, and this ordered the select committee to report a more specific resolution designating particular firms which the attorney general should designate. This motion failed by a vote of 130 to 169.[16]

The Apotheosis of Guillotine. The consideration of the bonus bill in the house involved a very important question of procedure and illustrated the fact that the house is not a deliberative body but is controlled by a few leaders. The Republican steering committee had considered various forms of closure and had apparently determined upon a rule limiting debate to five hours, preventing amendments, and allowing a single motion to recommit. There was a good deal of opposition to this, but the measure was finally forced through with the house even more effectively, although not so openly, gagged.

On May 29, 1920, the rules committee proposed a rule, "That it shall be in order for six legislative days, beginning May 29, 1920, for the Speaker to entertain motions of members of committees to suspend the rules under the provisions provided by the general rules of the House." The rules of the house provided that "the Committee on

[14] By H. Res. 517 from the committee on rules. This rule gave three members the right to revise and extend their remarks in the *Record*. See April 12, p. 5960.

[15] *Congressional Record*, p. 5964.

[16] *Ibid.*, April 13, p. 6033.

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Rules shall not report any rule or order which shall provide that business under paragraph 7 of Rule XXIV (Calendar Wednesday) shall be set aside by a vote of less than two-thirds of the members present; nor shall it report any rule or order which shall operate to prevent the motion to recommit being made."

The point of order was made that the rules committee's proposal required a two-thirds vote so far as Calendar Wednesday was concerned and with respect to eliminating the motion to recommit was not privileged and must take its place on the calendar. Speaker Gillett made a ruling so doubtful that he was sustained only by a vote of 192 to 189 which, in view of the large Republican majority in the house, was rather remarkable.

"It seems to the chair," he said, "that the Committee on Rules is not permitted to do anything which directly dispenses with Calendar Wednesday or with the motion to recommit, but it can bring in a general rule, like the present one, which indirectly produces that result as a minor part of its operation.

"Of course this resolution is brought in, as we all know, on the anticipation that the House will adjourn next Saturday. If a resolution to adjourn should be brought in by the Committee on Rules and passed by the two Houses, that makes the suspension in order for the next six days; that would dispose of Calendar Wednesday and the motion to recommit. Would anyone contend that on that account it was out of order? The Chair thinks that this motion is not so directly aimed at the rule which provides for Calendar Wednesday and the motion to recommit as to make it out of order."[17]

Thirty minutes of debate to a side were allowed on the rule which was adopted by a vote of 220 to 165. Mr. Fordney immediately moved "that the rules be suspended and that the House pass the bill H. R. 14157, known as the soldiers' bonus bill." Twenty minutes a side were allowed on this, the rules were suspended and the bill passed by a vote of 289 to 92. Concerning this situation Congressman Mann, Republican, and one of the ablest parliamentarians in the house, had the following to say:

"Here is the situation: Congress has been in almost continuous session for more than a year. The Republican side of the House has had a reasonably large majority. If we say to the country, as we will if this resolution be passed, that the Republican majority in this House, with a year's time, has been unable to bring in legislation and

[17] *Congressional Record*, May 29, p. 8543.

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perfect it where it is subject to amendment, it acknowledges its impotency and its incapacity. It will be called to your attention and to your constituents on every stump that the Republican majority of the House has not enacted much reconstructive legislation, and then it will be told in addition that the Republican majority of the House was afraid to enact legislation under ordinary rules and was incapacitated from following the ordinary practice. What will you answer when men say to you that a Republican majority in the House passes a revenue bill raising a billion and a quarter of dollars without a chance to amend it? No party in the history of the country has ever passed a revenue bill under suspension of the rules."[18]

The same form of guillotine was resorted to when the house of representatives considered the joint resolution terminating the state of war with Germany. The committee on rules reported (April 8) a special rule fixing debate on the peace resolution from eleven to five the next day.[19] At five o'clock the previous question was considered as ordered without any intervening motion except one to recommit. Amendments were impossible. The house had to take the resolution or leave it.

[18] *Ibid.*, May 29, p. 8546.
[19] *Ibid.*, April 8, p. 5336.

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LEGISLATIVE NOTES AND REVIEWS

EDITED BY W. F. DODD

State Police. During the last few years there has been considerable legislation relating to state police in widely distributed sections of the United States, and also in the Canadian provinces of Alberta and Manitoba. In addition to state agents for the enforcement of particular laws, such as those relating to labor or the protection of fish and game, there are now fifteen states with a small police force of a more general character.

Precedents for a centralized police are to be found in the gendarmes in the countries of continental Europe, the royal Irish constabulary, and (more closely resembling the recent developments in the United States) the Australian trooper police, dating from 1825, the Canadian mounted police, established in 1873, and the British South Africa police, organized in 1897. Similar forces of constabulary have also been established in the Philippine Islands and in Porto Rico.

In the United States, the Massachusetts district police, established in 1865 and reorganized in 1879, perform mainly detective functions. In South Carolina, a force of state constables was provided to enforce the state liquor laws in connection with the dispensary system (1896). Connecticut in 1903 also organized a small body of state detective police.[1]

The Texas rangers, organized in 1901, had more active functions, the suppression of disorder and the protection of the Mexican frontier. Similar bodies were established in Arizona in 1903, and in New Mexico in 1905. The Pennsylvania state constabulary, organized in the latter year, was a larger and more important force, whose success has had much to do with the recent legislation in other states.

In 1917, the New York state troopers were established,[2] and South Dakota provided for a state constabulary, composed of the sheriffs and deputy sheriffs, under a state sheriff appointed by the governor. In 1918, a South Carolina law provided for a force of county police in

[1] J. A. Fairlie, *Local Government in Counties, Towns and Villages*, p. 269; J. M. Mathews, *Principles of American State Administration*, p. 444.

[2] *American Political Science Review*, Vol. 11, p. 539 (1917).

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one county. In 1919, state police forces were organized in Alabama, Tennessee, Connecticut, Michigan and West Virginia; and Pennsylvania and Texas reorganized the state constabulary and rangers.

In the southern states, three distinctly different police systems have been devised. In South Carolina, a rural police system was established, in 1918, for Greenwood County. All magistrates' constables were abolished, and their duties devolved upon the county police. The county is divided into three police districts, for each of which one policeman is appointed by the governor of the state, for a term of two years at a salary ranging from $1100 to $1200 a year. The county policemen are placed under the direction and control of the sheriff of the county "in all matters connected with their police duties."[3] The sheriff is required to confer and advise with the policemen at least once a month, and the policemen are required to make a weekly report to the sheriff. Under the general direction and control of the sheriff, it is the duty of the policemen "to patrol the entire county, especially the rural districts, and to prevent or detect and prosecute for all violations of the criminal law, making arrests for suspected crime whether upon view or immediate information or complaint, and report their acts and doings, and all known or suspected violators of the law to the sheriff once a week." Also, each policeman must patrol his own particular district at least twice a week and each policeman must be on duty at least ten hours every day. Furthermore, "they shall frequent railroad depots, stores and other places of a public character where disorder is probable, or vagrants may be loafing, or alcoholic liquors are sold or used, and as often as practicable, ride by houses that are off the public highways, and in lonely parts of the county, especially such as are without male protectors." They are especially to prevent drunkenness, boisterous conduct, obscene or profane language, carrying weapons contrary to law, trespassing on lands without the permission of the owner, gambling, vagrancy, and violation of the child labor law. The county police "shall have authority to summon the *posse comitatus* to assist in enforcing the law, and any citizen who shall fail to respond or render assistance, when so summoned, shall be guilty of a misdemeanor."

The Alabama state police as constituted by the legislature of 1919, is regulated in much the same manner as the state militia in the service of the United States. The governor is empowered to call "to his aid and to the aid of the local peace authorities, such number of police,

[3] South Carolina, *Session Laws* (1918), p. 741.

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patrolmen, or police officers of any town or city as he may deem necessary, and to order them to the locality where needed, to preserve the peace, and arrest and prosecute according to law any persons violating the laws of the state."[4] The governor is thus authorized to call into the state service such local police "and any other persons" whom he might employ at any time when he has reason to suspect "at any place within the state, the outbreak of any riot, rout, tumult, insurrection, mob, or combination, to oppose the enforcement of the laws or to break the peace by force or violence which cannot be speedily suppressed or effectually prevented by the ordinary *posse comitatus* and peace officers."

Not only when the enforcement of the state laws are apt to be opposed, but also when the local municipal ordinances are apt to be violated, the governor may call into state service the local police to assist other local police officers when they cannot cope with the danger. "It shall be the duty of all police officers and patrolmen when called upon by the governor or directed by the city authorities to obey the orders and directions of the governor and of the city authorities and to proceed to the place where the services are needed." Such police "shall be deemed and treated as legal officers of the state and county where acting."

When called upon by the governor, the municipal officials are required to furnish policemen and send them to any locality that the governor may command. When in the opinion of the governor, this state police is not sufficient to master an emergency, "the governor may in his discretion employ such additional men as he may deem necessary to be sent to the locality where needed to preserve the peace." In his discretion, the governor may "place them under the orders and discretion of the sheriff of the county, or of the mayor of the city, if the locality of their service shall be in an incorporated town or city."

Local police in state service are to be paid on much the same principle as the national guard is paid while in the service of the United States. The Alabama act provides that "any person or official of a city failing, refusing or neglecting to comply with the orders or directions of the governor . . . . shall be guilty of a misdemeanor," and "may be punished by imprisonment for not exceeding twelve months at hard labor for the county."

A state police force which is at once well organized and effectively distributed was created by the Tennessee legislature of 1919. It con-

[4] Alabama, *Session Laws* (1919), No. 170, p. 164.

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sists "of not more than 600 regular officers, of the following numbers and grades: Ten district officers, one of whom shall be assigned by the governor to each of the congressional districts of the state; one county officer for each of the 96 counties of the state, and 494 sectional officers, to be appointed from the several counties as the governor may in his discretion think proper, and such special officers as may be necessary to be appointed to meet an emergency."[5]

All officers of the Tennessee state police are appointed and commissioned by the governor. All policemen are engaged for a term of six years. The officers receive from $2.25 to $3.00 a day, and traveling expenses according to whether they are county or district officers.

The general duty of each state police officer is "to suppress all affrays, riots, routs, unlawful assemblies, or other acts of actual or threatened violence to persons or property." Coöperation of the civil departments of the state government with the state police is guaranteed. Specifically speaking "any department of the state government may be designated by the governor as the department through which he shall carry out and execute the provisions" of the law, "and as the repository and custodian of the records required to be filed," and "whenever the state police or any part thereof, are placed upon active duty by order of the governor, he may place them under the direction and command of any officers of the state government." This might include the district attorneys-general as well as the other state officers.

The governor of Tennessee has direct command of the state police, just as he has direct command of the state militia, but the police must coöperate with the county officers when they are sent to a locality for special duty. While in such a locality, "their authority and power shall not be superior to the powers and authority of the sheriff as the principal officer of the peace of his county, but the protection afforded to the safety of persons and property shall be in addition to the protection of the sheriff in each county." In this manner, the state police may act as a link between the state civil departments and the county authorities for the achievement of a common object.

In the Northwest, Idaho has followed the direction of the South Dakota law of 1917, by creating a centralized and consolidated state constabulary to consist of "the department of law enforcement and all officers of the state, counties and municipalities who possess the power of peace officers . . . . for the purpose of coöperating with and

[5] Tennessee, *Public Acts* (1919), ch. 96, p. 231.

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assisting the governor in the performance of his constitutional duty of seeing that all of the laws are faithfully executed."[6] For this purpose the department of law enforcement is given, among other powers, authority to enforce the temperance and criminal laws of the state, to detect and investigate crime, suppress riots, prevent affrays, prevent wrongs to children and dumb animals, to enforce laws for the care of dependent and neglected children, and laws for the maintenance of morality, "to order the abatement of public nuisances, and to enforce such orders by appropriate procedure in the courts." To carry out these provisions "any officer or employee of the state may in addition to his other duties be deputized as, and exercise the powers of, a state policeman," and the commissioner of law enforcement may call to the assistance of the state constabulary any other person.

Although the Idaho state constabulary is under the department of law enforcement, it is given jurisdiction and power to act anywhere in the state, and the members of the constabulary "shall furnish the department of law enforcement from time to time, such information regarding conditions in their several jurisdictions as may be required, and it shall be their duty to inform themselves of all violations of the criminal laws of this state, to notify the prosecuting attorney thereof, to file criminal complaints therefor, and to arrest and assist in the prosecution of persons charged therewith." The Idaho legislature appropriated $50,000 for the carrying out of the provisions of the state constabulary act.

The California legislature of 1917 authorized the creation of a state bureau of criminal identification and investigation, under the supervision of a board of three managers appointed by the governor.

In 1919, the legislature of Connecticut organized a state police system which is something of a miniature of the larger organizations of Pennsylvania and Texas. The Connecticut organization consists of one superintendent of state police and a squad of from five to fifteen state policemen, including one captain, one lieutenant, and one sergeant. The superintendent is to hold office for two years, but the policemen serve during the pleasure of the state commissioners. The superintendent is given authority to discharge not more than five of his subordinates for inefficiency. General offices in the capitol of the state are provided for the police department, and $3000 is allowed for office assistance.

[6] Idaho, *Session Laws* (1919), ch. 103, p. 368.

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The department of police is required to assist the governor, state's attorneys, coroners, the superintendent of fisheries and game, and other state prosecuting officers in the detection and prosecution of crime. Each state policeman "shall have, in any part of the state, the same power with respect to criminal matters and the enforcement of the law relating to intoxicating liquors and gaming, as sheriffs, police or constables have in their respective jurisdictions"[7] and "whenever the state policemen shall not be engaged in any specific work . . . . they shall . . . . . use their best endeavors to prevent crime, preserve the peace of the state, and secure the detection, arrest and conviction of offenders." Sheriffs, municipal policemen, and constables may be called upon to assist the state police, and shall be paid for such service, not more than $5.00 a day and expenses.

The annual salary of the superintendent of the Connecticut state police is not to exceed $4000; that of a captain, $2700; of a lieutenant, $2300; of a sergeant, $2100. The other policemen are not to receive more than $5.00 a day.

In Texas an act was passed in 1919 "for the reorganization of the State Ranger Force for the Protection of the Frontier and suppression of lawlessness throughout the State."[8] The reorganized ranger force is to consist of "one headquarters company, and four companies of mounted men, except in cases of emergency, when the governor shall have authority to increase the force to meet extraordinary conditions. The headquarters company shall consist of one captain, who shall be designated the senior captain of the force, one sergeant, and not to exceed four privates." The new companies are to contain only fifteen privates instead of twenty as theretofore.

The direction of the force is centralized. The governor is required to appoint a captain "who shall discharge the duties of a quartermaster, commissary and paymaster." The entire ranger force "shall always be under the command of the Governor; to be operated under his direction in such manner, in such detachments, and in such localities as the governor may direct, acting by and through the Adjutant General" and the governor is authorized to keep this force in the field just as long as he may deem it wise to do so.

Both the officers and the men are to be appointed by the governor. The officers may be removed at the governor's pleasure, but the enlisted men are appointed for two years service, unless sooner removed for

[7] Connecticut, *Session Laws* (1919), ch. 297, p. 2971.
[8] Texas, *General Laws* (1919), ch. 144, p. 263.

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cause by either the governor or the adjutant general. As in 1901, the governor and the adjutant general have direct control of the government and discipline of the rangers, but the new law requires that applications for appointment be made directly to the governor. No person is to be appointed to the Texas ranger force who is not a citizen of the United States. Preference for appointment is to be given to honorably discharged soldiers of the United States Army.

The captains are to receive monthly $150; sergeants $100; privates $90. An increase in salary of fifty per cent is to be given after the first two years of service; and additional increases of five per cent for each succeeding year of service are to be given until the pay shall in this manner have been increased twenty per cent. An allowance of $30 a month is provided for subsistence of members while on duty at their station. An allowance of $3 a day is provided for the ranger when on duty outside of his district. Each ranger is required, as formerly, to furnish his own horse, while the state furnishes him with arms and equipment.

As formerly, the Texas rangers are "clothed with all the powers of peace officers, and shall aid the regular civil authorities in the execution of the laws. They shall have authority to make arrests, and to execute process in criminal cases, and in such cases they shall be governed by law regulating and defining the powers and duties of sheriffs when in discharge of similar duties; except that they shall have the power and shall be authorized to make arrests, and to execute all process in criminal cases in any county in the State." The rangers are permitted to accept volunteer aid from citizens, in the apprehension of criminals, but no provision is made for the pay of such citizens for their aid.

Closely akin to the reorganization of the Texas rangers is a similar reorganization of the Pennsylvania state police. More extensive in detail than the Texas legislation, but quite similar in general plan, the Pennsylvania act of 1919 involves many new police duties, including a bureau of fire protection. A superintendent of the department of state police is appointed by the governor. His salary is $6000 a year. This superintendent appoints his own deputy superintendent, who receives $4000 a year. He also appoints a chief of the bureau of fire protection who receives $4000 a year, and who performs such duties as the superintendent may prescribe. Clerical employees of the department of police are appointed by the superintendent. The superintendent of police is empowered to appoint the entire police force, and have supreme control over them, subject to the approval of the governor.

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The police force consists of five troops. Each troop is to have a captain, lieutenant, a first sergeant with fifteen other noncommissioned officers. and sixty-five privates. The members enlist for two years. They must be between the ages of twenty-one and forty years, and able to ride horseback. The annual pay of the privates is $1200; noncommissioned officers, $1350 to $1500; commissioned officers, $1800 to $2400.

The superintendent of police provides for the equipment of the organization, including horses and motor vehicles, where it is deemed necessary. He must also establish local headquarters in various places, and distribute the policemen throughout the commonwealth in various sections where they are most needed.

The powers of the Pennsylvania state police are sufficient to cope with any potential local emergency. The various members are "authorized and empowered to make arrests without warrant for all violations of the law which they may witness, and to serve and execute warrants issued by the proper local authorities,"[9] and they are granted "all the powers and prerogatives conferred by law upon members of the police force of cities of the first class and upon constables of the Commonwealth."[10] They are required "to aid in the enforcement of all laws relating to game, fish, forestry, and water supply. Members of the State Police Force are authorized and empowered to act as game-protectors and as forest- fish- or fire wardens." They are permitted to "seize all guns, boats, decoys, traps, dogs, game, fish, shooting paraphernalia, or hunting or fishing appliances or devices, used, taken, or had in possession, contrary to law." They may "search without warrant any boat, conveyance, vehicle, or receptacle, when there is good reason to believe that any law has been violated," and they may serve subpoenas issued for any investigation or trial pursuant to such powers.

With the approval of the governor, the state police "may be called upon, by any other department of the state government, to enforce all laws applicable or pertaining to such department or any regulation thereof." Whenever possible, they are required to "coöperate with counties and municipalities in the detection of crime, the apprehension of criminals, and preservation of law and order throughout the state."

[9] Pennsylvania, *Session Laws* (1919), No. 179, p. 368.

[10] This power was utilized on November 29, 1920, when the Pennsylvania state police quelled a riot in Carlisle, Pa.

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The department of state police is required to "collect and classify and keep at all times available complete information useful for the detection of crime and the identification and apprehension of criminals. Such information shall be available for all police officers within the Commonwealth." The department of police is also required to make a report to the governor biennially. Barracks for the policemen, with stables adjacent are to be provided near the state capitol.

This reorganized state police of Pennsylvania assumes all the former duties and books of the state fire marshal, which position is abolished. "The Superintendent of the State Police may appoint and remove the chief of the fire department of any county, city, borough, town, or township, where a fire department is established . . . . and may appoint individual citizens as assistants to the department."[11] The police "may adopt and enforce rules and regulations governing" the use and storage of any inflammable or combustible materials, and investigate the circumstances of every fire that has endangered life or property. They may inspect buildings whenever necessary, order their removal or their improvement against the danger of conflagration.

In consultation with the state superintendent of public instruction, the department of police may decide upon "books of instruction, for use in the public and private schools, of students of all grades, with regard to the dangers of fire and the prevention of fire waste." The state police is thus given specific power over fire prevention.

Michigan authorized a force of state police as a war measure, and, in 1919, created a permanent department of state police.[12] The commanding officer is appointed by the governor, at a salary of $4000 a year. He appoints one officer as adjutant and quartermaster, five captains, six lieutenants, sixteen sergeants, twenty corporals, and one hundred and fifty-four troopers. Applicants must be citizens of the United States, of sound constitution, able to write, of good moral character and not less than twenty-one years of age; and must pass a satisfactory physical and mental examination. Officers are commissioned by the governor, and may be dismissed only for inefficiency or misconduct, and with the approval of the governor. Troopers may be dismissed by the commanding officer whenever he deems such proposed dismissal necessary for the efficiency of the service.

The several officers and members of the force are vested with all the powers of deputy sheriffs in the execution of the criminal laws of the

[11] Pennsylvania, *Session Laws* (1919), No. 286, p. 710.
[12] Michigan, *Public Acts* (1919), p. 45.

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state, and of all laws for the discovery and prevention of crime, and have authority to make arrests without warrants for all violations of the law committed in their presence, including laws designed for the protection of the public in the use of the highways of the state, and to serve and execute all criminal process. It is the duty of the state police force to coöperate with other state authorities and with local authorities in detecting crime, apprehending criminals, and preserving law and order throughout the state.

Activities of this force have included the suppression of gambling and riots, fighting forest fires, and the apprehension and arrest of fruit thieves and robbers.

Resembling the state police in this country are the Canadian provincial police, recently established in Alberta and Manitoba. The Alberta acts of 1917, 1919 and 1920, created the Alberta police force, with central headquarters in the city of Edmonton. The control of this force is vested in "the Attorney-General, or such other Minister as may from time to time be appointed by the Lieutenant Governor in Council," but the direction of the force is centralized in a commissioner who is also appointed by the lieutenant governor in council.

The commissioner's power over the provincial police force is almost absolute. He is empowered to "appoint such persons and make such distinctions in rank as in his opinion shall be necessary for the efficient working of the force, and he shall appoint such number of provincial constables as he thinks proper from time to time, not exceeding in all five hundred men, and may employ any other persons to do such acts, matters and things as may be necessary for the efficient working of the force." He has much to do in regard to the salaries of the members and he "may make, alter and rescind regulations affecting the government, discipline and guidance of the force."[13] He engages every member of the force for a period of not less than two years, but he may suspend or discharge a member at any time. His authority was further augmented by the Alberta legislature of 1920, when that body enacted that the commissioners should "have power at any time upon the consent either verbal or written, of the mayor, chief of police or reeve of any municipality, to require or command the services of any member or members of the municipal police force of such municipality as he may deem necessary for service in any part of the province outside the boundaries of such municipality, and each such member of any municipal police force, while so serving shall be under the authority of

[13] Alberta *Statutes* (1919), ch. 26, p. 172.

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the Commissioner, and shall have all the powers of a member of the provincial force, and shall be a member of the Provincial Police Force within the meaning" of the police acts. Furthermore, the commissioner is authorized to notify the mayor or other police official of any municipality "that he has assumed the conduct of the investigation or prosecution of a crime committed in the vicinity of any municipality, and therafter it shall be the duty of any member of such municipal police force to render to the commission or any member of the Provincial Police Force charged with the investigation or prosecution of such crime all possible assistance and information and to carry out and obey the orders of the Commissioner or such member of the provincial force in charge of such investigation or prosecution."

Every member of the Alberta police force is a game and fire guardian; school attendance officer; inspector respecting noxious weeds; and has powers over the speed and operation of motor vehicles, theatres, billiard rooms, and factories. The members are required in cases where necessary, to apprehend criminals, convey convicts, prevent impending crime, and to execute warrants. Special power is given the provincial policemen to enforce the provincial liquor laws. They may when the commissioner so orders, break and enter any building or other place, stop vehicles or other means of conveyance, and seize any liquor that they may find. They may be authorized to arrest and search individuals suspected of having liquor on their persons.

The 1920 legislative session of Manitoba reconstituted the Manitoba provincial police as established in 1913, so that that force will be organized almost exactly as the Alberta police, but "the number of the constables on the force shall not at any time exceed one hundred."[14] The lieutenant governor in council is authorized to provide offices and lockups and other accomodations required by the force. It is made the duty of every person in the province "when called upon by any peace officer or member of the force, promptly to aid and assist him in the execution of his duties."[15] Punishment is provided for the failure of a person to do so.

It would thus seem from the recent legislation that the Texas rangers, the Pennsylvania and Michigan police, and the Canadian provincial police, have become organized on very similar lines, and that each has benefited by the previous experience of the other.

[14] Alberta *Statutes* (1920), ch. 8, p. 48.
[15] Manitoba *Legislative Acts* (1920), ch. 102, p. 320.

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In several other states there is an active movement for the establishment of state police forces. In Massachusetts a special commission on state constabulary was provided in 1917, which recommended that the existing district police be abolished, that its inspectorial duties be assumed by other state authorities, and that its police duties be transferred to a new state-wide police system, composed of policemen chosen from the ranks of city policemen now in active service, by a state commissioner of police. In 1920, probably influenced by the Boston police strike of September, 1919, the legislature passed a resolution providing: "that the adjutant general and the commissioner of public safety shall investigate the advisability, practicability, and cost of establishing a state police force."[16] This commission is to make a report to the next general court. In the meantime, the present police forces of the cities are authorized to coöperate by the provision that "the mayor of a city and selectmen of a town may, upon the requisition of the mayor and aldermen of another city or the selectmen of another town, provide police officers who shall have the authority of constables and police officers within the limits of such city, and town, except as to the service of civil process."[17]

Proposals for a state police force were introduced into each house of the Illinois general assembly in 1919, but were defeated. An active propaganda in favor of state police legislation has been going on in Illinois since 1919; and bills for the establishment of such a police force will be again proposed in the session of 1921.

The governor of Alaska has drafted a bill for a territorial police force, which he has asked Congress to enact. More or less activity in favor of a state police system is also reported in a number of other states.[18]

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[16] *Massachusetts Acts and Resolves*, 1920, p. 575.
[17] *Ibid.*, ch. 591, sec. 13.
[18] *Journal of Criminal Law and Criminology*, Vol. 11, p. 453 (November, 1920).

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NOTES ON INTERNATIONAL AFFAIRS

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The Meeting of the Assembly of the League of Nations.[1] The opening session of the Assembly of the League of Nations was held at Geneva on November 15. It can scarcely be said that the meeting was begun under favorable auspices. Apart from the fact that the provisions of the Covenant of the League with respect to the jurisdiction and powers of the Assembly were on many points obscure, there were two strong influences at work to hamper the proceedings of the Assembly. In the first place there were the political and economic conditions arising out of the execution of the treaty of Versailles, which formed a sort of closed territory into which the Assembly of the League could not enter; and in the second place there was the presence of the Interallied Council as executor of the treaty, which, in the form of an interlocking directorate, influenced the decisions of the League Council and was thus indirectly a disturbing factor in the work of the Assembly. Neither of these two obstacles proved fatal to the formal activities of the Assembly, but they undoubtedly limited the scope of its functions and introduced division into the ranks of its members. Whatever may have been the supposed theoretical advantages which led to the tying up of the Covenant of the League with the treaty of Versailles, whether in the interest of softening the harshness of its terms or of promoting their execution with least injustice, it may now be questioned whether the treaty has not done more to hurt the League than the League has done to help the treaty.

The Organization of the Assembly. Article III of the Covenant of the League provides that the Assembly shall consist of representatives of the members of the League, and that it shall meet at stated intervals or from time to time as occasion may require. The internal organization and procedure of the Assembly are, according to Article V, to

[1] The following description is taken from unofficial sources, and for final accuracy must be checked up with the official documents when they are forthcoming.

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be regulated by the Assembly itself, with the exception that the secretary general, who is at the head of the permanent secretariat of the League, is ex officio secretary general of the Assembly. The first task, therefore, of the Assembly was the election of its officers and the selection of its committees for the detailed study of the problems presented to it. Paul Hymans, head of the Belgian delegation and minister of foreign affairs of that country, was elected president by secret ballot. It was next decided that six committees or commissions should be appointed, each of which was to consider a definite group of subjects and to report later to the Assembly. In order to avoid offending the sovereignty of the small nations it was decided that each of the forty-one nations should be represented upon each committee. The result of this was to divide the Assembly into six assemblies, each considering the set of questions assigned to it. The following subjects were assigned as the special work of the six committees: general organization, technical organization, the court of international justice, finances, new members, and, together, disarmament, blockade, and mandates. The respective chairmanships of these committees went, by election of the Assembly, to delegates from Great Britain, Italy, France, Spain, Chili, and Sweden. In addition to these chairmen the Assembly elected six vice-presidents, representing the following states: Japan, Holland, Argentina, Czechoslovakia, Canada, and Brazil, four of the posts thus going to non-European nations. The president and vice-presidents, together with the chairmen of the committees, were thereupon formed into an executive committee of thirteen members, whose business it was to act as a sort of steering committee of the Assembly to direct the order of business and make informal adjustments of difficulties arising in the Assembly as a whole or in the separate committees.

Rules of procedure for the work of the Assembly and its committees, drawn up by the secretariat, were presented at the second meeting of the Assembly, and a sharp dispute immediately broke out over rule 15, which provided that "unless the committees decide otherwise, the meetings will be private, and no minutes will be kept." A motion made by Lord Robert Cecil, to the effect that all meetings should be public except when the committees could show good reason why they should be private, was defeated by the opposition of the British and French delegates, but it was then moved by the French delegation that a *procès-verbal* or summary report, not stenographic, of the meetings should be kept. The rule of unanimity was prescribed for the Assem-

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bly by Article III of the Covenant, and it became of necessity the rule of the separate committees. The large size of the committees, due to the representation of all of the states, threatened to make the prompt expedition of business impossible, and proposals were made to divide the committees into smaller ones. It will be remembered that one of the chief obstacles encountered at the Hague Peace Conferences was that of securing unanimous decisions in the several committees. A rule of "quasi-unanimity" was there introduced, which consisted in the abstention from voting of the power or powers opposed to the resolution drawn up by the majority of the committee; but even this method proved ineffective whenever, as in the case of the proposal for compulsory arbitration, one or more of the Great Powers were ranged among the opposition. At the meeting of the Assembly the president resorted on one occasion, that of the veto by Argentina of the resolution on amendments, to the expedient of ruling that the question was one of procedure, not requiring unanimity, and the resolution was accordingly adopted. On other occasions individual states refrained from voting when they were out of sympathy with the resolution proposed, as in the case of the attitude of the French delegation towards the admission of Bulgaria into the League.

Jurisdiction of the Assembly. Article III of the Covenant of the League prescribes in general terms the jurisdiction of the Assembly. It is provided that "the Assembly may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world." The same language is used in Article IV in describing the general jurisdiction of the Council. In consequence of this general grant of power to the Assembly, whatever functions were assigned by the Covenant to the League without specific mention of either of its two constituted bodies, fall within the coördinate control of the Assembly, while other functions in respect to which the Council is assigned specific duties, are not necessarily reserved from the deliberative, as distinguished from the active, jurisdiction of the Assembly. Thus while the Council is entrusted by Article VIII with the duty of formulating plans for the reduction of armaments, the general problem of disarmament, as well as that of the manufacture by private enterprise of munitions and implements of war, is fully within the scope of the Assembly's jurisdiction. The guaranty of territorial integrity and existing political independence contained in Article X is an undertaking assumed by the members of the League as a body, so that the Assembly has jurisdiction to interpret the meaning of the article, in spite of the fact

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that in the event of aggression contemplated in the article it was provided that the Council should advise upon the means by which this obligation should be fulfilled. The declaration in Article XI of the collective concern of the whole League for any war or threat of war, and of the intention of the League to take any action that may be deemed wise and effectual to safeguard the peace of nations, creates a general jurisdiction of the Assembly over such questions, even though it is the Council which is to be summoned forthwith in case any such emergency shall arise. In the case of Article XIV the duty of the Council to formulate plans for a Court of International Justice does not deprive the Assembly of the right to discuss the general nature of the international court and its proper functions. So also the obligations of boycott and military intervention assumed by the members of the League under Article XVI form a proper subject of deliberation and resolution by the Assembly, without any encroachment upon the special duty of the Council to recommend what contribution of military and naval forces shall be made in case they should be needed. It is undoubtedly a defect of the Covenant that the powers of the Assembly and those of the Council overlap on a number of points, but it was the inevitable consequence of making the Council at the same time an executive body to carry out the decisions of the League and a legislative body empowered to deliberate and act upon its own account within a prescribed field. The result was that while the Council held separate meetings of its own at the same time that the Assembly was in session, it was, through the representation of its members in the Assembly, an active participator in the deliberations and a constant obstacle to the free decisions of the Assembly.

In view of the difficulties experienced from the start in defining the separate jurisdiction of the Council and of the Assembly, a special committee was appointed by the Assembly to report on relations between the Council and the Assembly. The report was signed by the French delegate and contains the following delimitation of the activities of the two bodies: "It is impossible to consider the Assembly as a chamber of deputies and the Council as an upper chamber. The objection to this view is that while in certain matters the Council and the Assembly have rights, in others they have special rights, and that the two bodies are not called to discuss exactly the same points. If the Assembly were a chamber of deputies and the Council an upper chamber, the same subjects would be discussed before them. It is also impossible to consider the Assembly as a legislative and the Council as an executive body.

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The truth is that the League has no analogy in constitutional law." After a review of the provisions of the Covenant the conclusion was reached that neither body had jurisdiction to render a decision in a matter which was common to the other; that the Assembly had no power to reject or modify a decision which fell within the exclusive province of the Council, and vice versa; that the representatives sitting in the Council and the Assembly rendered the decisions of their respective states (that is, they had no standing except as such representatives); and that the Council would present each year a report to the Assembly. When the four principles came before the Assembly the first principle was amended so as to concede to the Assembly the right to examine any question within the jurisdiction of the League, while the second principle was amended to eliminate the word "exclusive," and then, on objection of the Canadian delegation, the principle itself was reserved. The other two principles were adopted as framed.

One of the underlying and half-formulated issues before the Assembly bore upon the relation of the League to its individual members. What was the bond of union created between the members of the League by the Covenant? The president of Switzerland, M. Motta, as host of the Assembly, felt it necessary at the opening session to "affirm once more that the League of Nations is not and never will be a superstate which will absorb sovereignties or reduce them into tutelage." The aim of the League was, he said, "to establish between independent and friendly states frequent and friendly contact and meetings from which affinities and sympathies will follow." The issue was formulated in definite terms when the question of the ratification of amendments came up for consideration. Following the postponement of action on amendments until a subsequent meeting of the Assembly, it was agreed that all constructive acts of the League, such as the creation of the international court, being in the nature of treaties were subject, in the same manner as formal amendments, to ratification by the members of the League according to the provisions of their domestic constitutions. A further instance of the necessity of ratification by each state of the decisions of the League was the reply of Denmark to the request of the Council to furnish a contingent of the League army which was to supervise the plebiscite at Vilna. It was stated that, although the party leaders of Denmark were in favor of acceding to the request, under the constitution of Denmark the project would have to be approved by the Danish parliament; and the reply was received by the Assembly as satisfactory. But due deference having been paid to the traditional

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theories of international law, the Assembly proceeded to raise a variety of issues which showed that it was far from blindly worshipping the old ideas and that its assertion of sovereignty and independence was not to be understood as interfering with the establishment of new principles of interdependence which were found to be imperatively needed in the modern world. The forms of existing law must be maintained and no nation was to be bound except by its own act; but the substance of that collective action for common interests which negatives the formal conception of sovereignty was demanded on all sides.

Problems before the Assembly: The Amendment of the Covenant of the League. The problems taken up by the Assembly may be roughly divided into legislative and executive problems. The former consisted in the attempt to formulate general principles regulating the future relations of the nations, as well as to lay down specific rules of conduct. First in importance of these problems was that of amending the Covenant of the League. The subject fell within the jurisdiction of the committee on general organization, and a vote was reached on November 23 in which it was decided to set aside proposed amendments and to appoint a standing committee to consider those and other proposals for amendment which might be made between that time and the second meeting of the Assembly. The decision to postpone amendments was based upon the ground, first that a change in the Covenant involved revision of the treaty of Versailles, of which the Covenant was an integral part, and it was thought inexpedient at that juncture "to pull apart that great international instrument which gave the seal to the peace of the world;" and secondly, that since the League was still young, being less than a year old, it would be desirable to have more experience before changing it. A further reason, not presented in the report, was the desire of the committee to give the United States time, after the new government came in on March 4, to frame its ideas of an international organization, which the committee might then examine with a view to determining whether the Covenant could be altered so as to incorporate them and thus pave the way for the entrance of the United States into the League. When the report of the committee was presented to the Assembly on December 2, M. Pueyrredon, head of the Argentine delegation, stood out against the rest of the Assembly and entered a dissenting vote. He insisted that his amendments relating to compulsory arbitration, the election of the members of the Council, and the admission of all states, were fundamental to the success of the League, and that unless they were adopted the League would be

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"in the position of having built the roof of a house before its foundation." The ruling of the presiding officer by which this dissenting vote failed to prevent the adoption of the report of the committee has been referred to above. Subsequently the Argentine delegation withdrew from the Assembly in protest against the refusal of the Assembly to overrule the report of the committee and permit consideration of the proposed amendments.

The Meaning of Article X. An interpretation of the obligations incurred by the members of the League under Article X of the Covenant was reached after relatively little discussion. The committee on the admission of new states first raised the question in connection with the proposal to admit Austria. In reply to the difficulty offered by the Swiss delegation, that the admission of Austria would fix the boundaries of Austria as laid down in the treaty of Versailles and thus guarantee to Austria the possession of Vorarlberg which had voted by plebiscite to belong to Switzerland, the committee declared that it could not be too emphatically stated "that Article X does not guarantee the territorial integrity of any member of the League. All it does is to condemn external aggression on the territorial integrity and political independence of any member of the League, and calls on the Council to consider what measures to take to resist that aggression." The Canadian delegation proposed an amendment eliminating Article X from the Covenant in accordance with the action of the Parliament at Ottawa in making that reservation among others to its approval of the Covenant in April, 1919. The amendment was referred by the Assembly on December 6 to the special committee appointed to study all the proposed changes and report to the next meeting of the Assembly.

The Problem of Disarmament. Article VIII of the Covenant expresses a recognition on the part of the members of the League "that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations," together with a further agreement "that the manufacture by private enterprise of munitions and implements of war is open to grave objections." In both instances the Council of the League is empowered to formulate definite plans to bring about the objects desired; but this, as we have seen, did not take away from the Assembly a concurrent jurisdiction over the general principles at issue. The subject was assigned to the sixth committee. From the outset strong objections were met against any present steps towards disarmament. The French delegation, backed by the British

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delegation, urged that before the nations could proceed to disarm the several peace treaties would have to be completely executed, and that an investigation would have to be made, full information exchanged between the nations, and a report presented by the military committee of the Council. The smaller states were in favor of making preparations immediately for a schedule of disarmament. As an alternative to present measures the British and French delegations acceded to a motion by the Brazilian delegation proposing a government monopoly of arms and munitions and providing publicity for the disposal of the products of the government arms factories. A sub-committee was appointed to study a practical way in which the Assembly could express its opinion of the plan. When it was seen that no definite declaration would be made by the committee, a motion was made by the Norwegian delegation that the Assembly recommend that the nations bind themselves not to spend more money on armament in 1922 and 1923 than they contemplated spending in 1921; but even this very modest proposal was defeated by the opposition of the Japanese delegation, which declared that Japan had laid out a military and naval program from which it could not depart for at least two years, and that so long as "there were nations outside the League not bound by the obligations imposed upon its members" Japan would continue to increase her armament.

In the meantime the Council of the League, which was also in session, acting on the recommendation of its permanent committee on military, naval, and aviation questions, forwarded on December 2 to the American government an invitation "to name a representative to sit on this committee in a consultative capacity during its study of the question of disarmament." It was pointed out by the committee of the Council that in spite of the fact that the United States was not a member of the League and would not be committed by the report of the committee, it would greatly facilitate the work of the committee in dealing with the technical problems of disarmament to have the United States represented. A precedent for such participation had been created in the coöperation of a representative of the United States in the drafting of the international court. President Wilson, however, in a letter of December 8, declined the invitation on the ground that in spite of his sympathies with the task "as the Government of the United States is not a member of the League, he does not feel justified in appointing a commission to take even a de facto participation in the deliberations."

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The Court of International Justice. Article XIV of the Covenant provides that the Council shall formulate and submit to the members of the League for adoption plans for the establishment of a permanent Court of International Justice. Acting on this authorization the Council appointed a special commission to prepare such a plan, and a meeting was held at the Hague in June, 1920, at which the United States was represented in an advisory capacity by Mr. Root. The report presented by the commission came before the third committee of the Assembly under the chairmanship of M. Leon Bourgeois, who had taken an active part in the work of the Council's commission as well as in the work of a similar committee of the Second Hague Conference. A division early manifested itself in the Assembly's committee on the question of conferring compulsory jurisdiction upon the court, a majority favoring permitting the complainant to cite the defendant nation to the court. An address before the Assembly on December 2 by President Motta of the Swiss delegation pleading for a "live" court with compulsory jurisdiction was received with general approval; but the opposition of Great Britain, France, Italy, and Japan prevented the inclusion of such a provision in the proposed plan. The report of the third committee announced that "the proposal for compulsory jurisdiction in international relations is not accepted. It is urged that such a principle could not possibly obtain unanimous support among all the members." On December 13, after an all-day debate on the point of compulsory jurisdiction, the Assembly adopted the plan drawn up by the committee of the Council, which provided that "the jurisdiction of the court comprises all cases which the parties refer to it and all matters specially provided for in treaties and conventions in force." By way of an initial step towards obligatory jurisdiction it was further provided that any of the members of the League might declare the jurisdiction of the court compulsory as between themselves in respect to disputes concerning the interpretation of treaties, or questions of international law, or the existence of facts constituting a breach of international obligation. The difficulty of the selection of the judges of the court, which proved to be the stumbling block to the adoption of the Hague judicial arbitration court, was adjusted to the satisfaction of the large and small states by the provision that the court should consist of eleven members to be nominated by the jurists of the Hague Tribunal (the so-called "Permanent Court of Justice") and elected by the Council and Assembly of the League.

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The Application of the Economic Boycott. The conditions under which the economic boycott provided for in Article XVI of the Covenant is to be put into effect are stated in specific terms, and no special functions are assigned to the Council to determine the action to be taken in the individual case. A number of questions were, however, left unsettled by the article. The subject fell within the jurisdiction of the sixth committee. Sharp debate developed over the respective functions of the Assembly and the Council in regard to the decision when a nation should be held to have violated the obligations which the economic sanction was designed to protect. A subcommittee was appointed to draft a plan for the use of the economic boycott, and it was first decided that the power to order an economic blockade should be placed absolutely in the hands of the Council. Some of the small states were in favor of allowing individual nations to decide whether they should blockade a neighbor or not; but it was agreed that no individual blockade action should be valid unless approved by the Council, on the ground that this was the one real weapon possessed by the League and that it must be used strictly and universally to be effective. On the other hand, in view of the opposition of the Swedish delegation to the conferring upon the Council of the power to decide when a blockade should be instituted, provision was made that a member of the League might reject the decision of the Council if it believed it to be unjust. Subsequently, on December 10, when the report of the committee was presented to the Assembly the provision empowering the Council to determine the moment for enforcing the blockade was eliminated, and it was left for each country to decide for itself when the blockade should be applied. Provision was made, however, that the Council should hold a meeting on notice from the Secretary General of an apparent violation, and that the minutes of this meeting should be thereupon communicated to the members of the League, who should then decide for themselves whether a case had arisen calling for the application of the economic sanction. The presentation of the report provoked strong expressions of opinion in the Assembly from those who felt that the one available weapon of the League was thus rendered too dull for effective use.

Colonial Mandates. The question of the interpretation of Article XXII of the Covenant relating to the administration of backward countries by mandatary states threatened more than any other to bring the final meetings of the Assembly to a deadlock. The article, after distinguishing three classes of backward territories provided that "the

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degree of authority, control or administration to be exercised by the mandatary shall, if not previously agreed upon by the members of the League, be explicitly defined in each case by the Council." Moreover, "a permanent commission shall be constituted to receive and examine the annual reports of the mandataries and to advise the Council on all matters relating to the observance of the mandates." On the other hand, by Article 119 of the treaty of Versailles, Germany renounced all her rights and titles to her overseas possessions to the Allied and Associated Powers, which resulted in the assumption by the Allied Supreme Council of complete control over the territories in question. A contest between the Assembly and the League Council for jurisdiction naturally ensued. On December 10 the Council announced that it could not at that time present a definite statement on the mandate situation because the terms of the mandates were still under discussion by the powers which had assumed the direction of the former German colonies.

On December 16 the sixth committee of the Assembly reported that it had made attempts to inquire into the character of the mandates, but that it had been informed by the Council that only the drafts relating to Class A mandates (Syria, Mesopotamia, and Palestine) had as yet been submitted by the Allied Supreme Council, and that even these the committee had only been permitted by the Council to see on condition of pledging themselves to secrecy. The report then protested against the possible use of the mandates for the purpose of recruiting troops or exploiting the resources of the territory. The situation presented was thus one in which the Assembly, as sole representative of the League as a body, had no power either to assign mandates or to lay down in advance the conditions of their administration, in spite of the fact that by the terms of the Covenant mandates are held under the League.

The following day the Council received Class C mandates, and promptly approved and published them without communicating with the Assembly's committee, thus showing that it intended to reserve to itself exclusive right to determine the conditions of the mandates without interference on the part of the Assembly. At the final meeting of the Assembly on December 18, the South African and Canadian delegates sharply criticized the Council for its failure to communicate to the Assembly the texts of the mandates, and they were answered by a defiant announcement from the British delegate that neither he nor his successor on the Council would feel bound by anything that "this Assembly or any other Assembly shall do." The recommendations of the

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committee were nevertheless adopted unanimously, the British delegate stating that they would have no effect, instead of voting against them. The letter of Secretary Colby, sent on November 20 to Great Britain, protesting against the assertion of the British government that the terms of the mandates could properly be discussed only in the Council of the League of Nations, should be read in this connection.

Other legislative activities of the Assembly may be briefly referred to. On December 9 the Assembly passed a resolution establishing a special bureau of a "temporary and advisory character" to deal with the economic situation. Five days later the Assembly adopted the recommendation of the bureau for the establishment of a system of international credit to assist in the economic reconstruction of those nations whose diminished credit prevented the purchase of necessary supplies. An international commission was created, to which the particular country in need of credit would assign certain specific assets, such as customs duties, railroads, or monopolies, as security for the credits granted. The commission was then to examine the assets and determine the gold value of the credit which it would approve against the security offered. The plan is perhaps the most constructive accomplishment of the first League Assembly. Efforts were made for a second time by the Swiss delegation to have the economic bureau instructed regarding a pooling of the world's raw materials, but the Assembly took no action in the matter. In an endeavor to prevent the spread of typhus the Assembly appointed on December 7 a commission of three members to conduct the fight and to make a new appeal to nations and welfare societies for funds which the appeal of the Council had not succeeded in raising. In order to supplement the present international convention for the suppression of the white-slave trade the Assembly adopted on December 15 a resolution providing for the calling of an international conference to which all nations, whether members of the League or not, would be invited, to draft standard laws for the prevention of traffic in women, and arranging for the submission by the secretariat to each government of a questionnaire asking what measures had been taken in that country to deal with the problem. At the same session it was voted to transfer from the Dutch government to the League of Nations the supervision of the enforcement of regulations for the suppression of the opium traffic.

Executive Acts of the Assembly. The Admission of New States. Among the executive acts of the Assembly, involving the practical application of principles and rules laid down in the Covenant, was the

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admission of six new states to the membership of the League. Sharp controversy developed over the proposed admission of the Teutonic powers and their allies. At the opening session of the Assembly the technical question was raised whether applications for admission after October 14, the date set by the Counell and the secretariat, should be received, and it was voted to permit the committee to consider them.

The fifth committee, in deference to the opposition of France, set aside the question of the admission of Germany. Opposition also developed from Jugoslavia, Czechoslovakia, and Rumania against the admission of Bulgaria and Austria, but on December 1 the committee voted to recommend the admission of Austria, as well as that of Costa Rica, at the same time voting against the admission of Ukrainia, Azerbaijan, and Lichtenstein, the last mentioned to be represented in the League by Switzerland. The admission of the Baltic states and of Georgia was also rejected, partly out of deference to the known opposition of the United States to any action with regard to the delimitation of the boundaries of Russia or the partitioning of its territories until the present government should be replaced by one more truly representative of the Russian people. On December 9 the admission of Bulgaria was voted, France alone withholding approval. The admission of Austria was finally voted by the Assembly on December 15, and the following day Bulgaria, Luxemburg. Finland, and Costa Rica were admitted.

The admission of Armenia to the League proved to be a source of special difficulty owing to the fact the Turkish nationalists under Kemal Pasha had rejected the treaty of Sèvres, as well as to the rumor that Armenia had set up a Bolshevist government in sympathy with that of Russia, so that, as in the case of Georgia, Azerbaijan, and the Baltic states, the League was unwilling to run the risk of guaranteeing its boundaries. The committee, therefore, reported against admission. In the meantime, however, the Assembly adopted a resolution calling upon the Council to select a power to negotiate with Kemal about Armenia. On November 24 the Council authorized the secretariat to submit a telegram to be sent to the powers inviting them to offer their services for that purpose, and on December 1 replies were received from President Wilson, as well as from the foreign offices of Spain and Brazil. The committee also decided against the admission of Albania, but the efforts of Lord Robert Cecil, who pointed out that the situation of Albania differed from that of Armenia in that Albania was not surrounded by hostile states, led the Assembly to set aside the report of the committee, and Albania was admitted by a unanimous vote.

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NEWS AND NOTES

Personal and Miscellaneous

EDITED BY FREDERIC A. OGG

University of Wisconsin

Professors Edward Elliott and J. R. Douglas, of the department of political science at the University of California, have severed their connection with that institution. Professor Raymond G. Gettell, of Amherst College, is filling one of the vacancies thus created during the present semester.

Hon. Roland S. Morris, ambassador to Japan, is giving a course in international law at the University of Pennsylvania during the current year. This course was formerly given by Dr. L. S. Rowe, who resigned to accept the directorship of the Pan American Union. Mr. Charles Lyon Chandler, manager of the foreign trade department of the Corn Exchange National Bank, of Philadelphia, is giving a course in the relations of United States and Latin America.

Dr. Clyde L. King has been promoted to a full professorship of political science at the University of Pennsylvania. He continues his work as an arbitrator in the milk industry and is sitting as a member of a conference representing the milk producers, milk distributors, and the public of Pennsylvania and Maryland. He has lately published a book entitled *The Price of Milk.*

Professor J. Q. Dealey, head of the department of social and political science at Brown University, plans to spend several months in China this year teaching and lecturing. Messrs. D. Appleton and Company will soon publish a new volume by him, entitled *The State and Government.*

Professor John C. Dunning, of Brown University, expects to spend the next academic year in South America studying political conditions.

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Mr. I. R. Hudson, instructor in history and political science at Vanderbilt University, has been advanced to the grade of assistant professor.

Dr. Ellery C. Stowell, formerly of Columbia University, has opened offices in Washington for the practice of law. He will confine his attention to matters involving questions of international law.

Professor Lindsay Rogers, of the University of Virginia, is lecturing at Columbia University during the winter session. One of his courses deals with recent developments in European governments and the other with the government of dependencies.

Mr. Frank M. Russell, formerly of the University of Washington, has been appointed acting assistant professor of political science at Leland Stanford University.

Dr. Luther H. Gulick, of the New York Bureau of Municipal Research, is conducting a graduate course in problems of municipal administration at Columbia University.

Professor Léon Duguit, dean of the faculty of law of the University of Bordeaux, and a distinguished writer on public and private law, gave six lectures at Columbia University, in December, on political and social conceptions in France since 1789.

Mr. Poultney Bigelow, formerly lecturer in the law school of Boston University, is preparing to go to the Orient with a view to making a study of the economic conditions of Japan and her new spheres of influence.

Mr. Norman L. Hill, who received the master's degree at Oberlin College last June, has been appointed to an instructorship in political science at Ohio Wesleyan University. A largely attended "school of citizenship" for women was held at Ohio Wesleyan last October, under the auspices of the department of political science.

Dr. J. Lynn Barnard, of the Philadelphia School of Pedagogy, has been appointed director of social studies in the department of education of the state of Pennsylvania. He is to develop and install a twelve-year program of training in citizenship in the schools.

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A new organization, known as the Citizen's Research Institute of Canada, with headquarters at Ottawa and Toronto, has been formed to study Canadian problems of administration and public finance. It is intended to do for the provinces and municipalities throughout Canada work similar to that which municipal research bureaus do for their own cities. The director of the institute is Mr. Horace L. Brittain, who continues as director of the bureau of municipal research of Toronto.

The American Civic Association held its sixteenth annual convention in October at Amherst, Massachusetts. The general subject was country planning.

A special series of lectures is being given this year before the students of the school of foreign service of Georgetown University on the general subject of the history and nature of international relations. Lecturers in the series thus far have included Professor Michael I. Rostovtseff, of the University of Wisconsin, Professor C. J. H. Hayes, of Columbia University, and Dr. Paul S. Reinsch, of Washington, D. C.

The fortieth annual meeting of the Academy of Political Science in the City of New York was held at the Hotel Astor in December. The general subject was American foreign trade relations, and separate sessions were devoted to tariff readjustments and trade expansion, the present economic situation in relation to foreign trade, the American merchant marine and the ship-building industry in relation to foreign trade, and educational training for foreign trade.

The twenty-sixth annual meeting of the National Municipal League was held at Indianapolis in November. Joint sessions were held with the Government Research Conference, the National Association of Civic Secretaries, and the Municipal League of Indiana. Subjects considered included service at cost for street railways, government aids to housing, the success of the city-manager plan, city-county consolidation, the crisis in public service, and methods whereby civic organizations influence voters. The progress report of the committee appointed to draft a model state constitution was presented and debated at length. The report calls for a unicameral legislature, with the governor as the only other elective official. A legislative council, so constituted as to be virtually a standing committee of the legislature, and authorized to sit between sessions, is also recommended. A feature of the

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convention was the banquet session at which the league's president, Hon. Charles E. Hughes, spoke on "The Fate of the Direct Primary." Mr. Hughes urged that the primary be so modified that legally elected party representatives would make the preliminary nomination, subject to appeal to a primary should this designation prove unsatisfactory to a fraction of the party membership. Professor Charles E. Merriam, of the University of Chicago, spoke at the same session in favor of the direct primary as at present employed.

An "institute of politics," proposed by President Harry A. Garfield of Williams College and authorized by the trustees in 1913, but delayed in opening by the war, will hold its first session at the college from July 28 to August 27. Its object, as announced, is to advance the study of politics and to promote a better understanding of international problems and relations. The subject for this summer's session will be international relations, and it is planned to have lectures by men of international prominence. Round-table conferences will be in charge of professors from American colleges and universities. The lectures are to be open to the public, but classes and conferences may be attended only by members of the institute. Membership is limited to members of faculties of colleges and to other persons who are specially invited on account of their special training and experience in the field of politics. An unnamed benefactor has provided funds to cover the expenses of the institute for three years, including remuneration of the lecturers and furnished houses for them while in Williamstown.

An active part in the discussion of public questions is being taken by the Chamber of Commerce of the United States; and several of its committees include, besides leading business men, some university and other specialists in political affairs. President Frank J. Goodnow, of Johns Hopkins University, W. F. Willoughby, and John A. Fairlie are members of the committee on budget and efficiency. President H. A. Garfield of Williams College is a member of the committee on immigration. John Ihlder is head of the civic development department, which is giving special attention to housing problems, which were considered at a meeting of the national council of the chamber, held in Washington on January 27 and 28. A referendum vote of the membership of the chamber throughout the country has been taken on a proposed program of federal tax revision. A special committee has been appointed to study recent Montana and Indiana statutes providing for state control of prices.

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Annual Meeting. The sixteenth annual meeting of the American Political Science Association was held at Washington, December 28–30, 1920. One hundred and twenty-five members registered, and the actual attendance may be estimated at one hundred and fifty. The American Historical Association, the American Sociological Society, and several other organizations were in session at Washington at the same time. The Political Science and Historical Associations held three joint sessions, and the several associations united in a formal dinner. Other social features included an informal dinner tendered the members of the executive council and board of editors by the president of the association, Dr. Reinsch, a smoker at the Cosmos Club, and a reception at the French embassy.

The meeting opened on December 28 with a luncheon conference at which Professor W. B. Munro, of Harvard University, presented a preliminary report of a committee on instruction in political science created at the annual meeting of 1919. The report dealt with instruction in civics in high schools and urged, in particular, the need for an authoritative definition of what should be included in the school curriculum under the name of civics, the need for trained teachers, and the need for better text-books. The report provoked lively discussion, and, as is stated below, the association took measures to secure the further consideration of the subject.

At a session devoted to administrative reorganization in the federal government, papers were read as follows: "Administrative Reorganization from the Executive Point of View," by W. W. Warwick, comptroller of the treasury; "The Educational Function of the Federal Government," by H. Barrett Learned; and "Administrative Reorganization from the Congressional Point of View," by Senator Thomas Sterling, of North Dakota.

At the first joint session with the American Historical Association presidential addresses were delivered by Professor Edward Channing on "An Historical Retrospect" and Dr. Paul S. Reinsch on "Secret Diplomacy: How Far can it be Eliminated?"

The subject considered at the opening session on December 29 was Problems of International Politics. Professor Pitman B. Potter, of the University of Wisconsin, presented a paper, entitled "Some American Steps toward International Organization," and Professor Quincy Wright, of the University of Minnesota, discussed "The Control of Foreign Relations." This was followed by an afternoon session devoted to contemporary political theory. Papers were read as follows: "A Survey

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of the Present State of the Study of Politics," by Professor Charles E. Merriam, of the University of Chicago; "Some Contributions of Sociology to Modern Political Theory," by Harry E. Barnes, of Clark University; and "The Technique of the Pluralistic State," by Professor F. W. Coker, of Ohio State University.

Relations between the legislative and executive branches were considered at the opening session on December 30. Professor Lindsay Rogers, of the University of Virginia, discussed "Legislative Inefficiency and Presidential Autocracy;" Professor Victor J. West, of Leland Stanford University, presented a paper on "Congressional Government and Administrative Efficiency;" and Professor George H. Haynes, of Worcester Polytechnic Institute, offered a fresh analysis of "Early Relations between the President and the Senate."

State constitutional conventions were discussed at a luncheon conference presided over by Professor A. R. Hatton, of Western Reserve University; and several members of the Political Science Association took part in a similar conference on Far Eastern affairs, held jointly with the American Historical Association, and presided over by Dr. Reinsch.

The last two sessions were joint meetings with the American Historical Association. The first was held at the Pan American Building and was devoted to Pan American politics and diplomatic relations. Papers were read as follows: "Constitutional Tendencies in Latin America," by Professor H. G. James, of the University of Texas; "Pan-Americanism and the League of Nations," by Professor Manoel de Oliveira Lima, of the Catholic University of America; and "The Monroe Doctrine as a Regional Understanding," by Professor Julius Klein, of Harvard University. The general subject at the closing session was Recent European History and Politics. Professor Ralph H. Lutz, of Leland Stanford University, gave a paper on "The Spartican Uprising in Germany;" a paper by Professor A. C. Coolidge, of Harvard University, on "The Break-up of the Hapsburg Empire," was read by Professor W. B. Munro; and a discussion of "The Syrian Question" was presented by Professor Stephen P. Duggan, of the College of the City of New York.

At the business session held on the afternoon of December 29 the secretary-treasurer submitted a report on the membership and finances of the Association for the fiscal year ending December 15. Briefly summarized, this report was as follows:

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1. Membership

	Year ending Dec. 15, 1920	*Year ending Dec. 15, 1919*
Members gained during year	96	68
Members lost during year	118	143
Net loss	22	75
Applications pending	21	3
Total membership	1,309	1,321

2. Finances

	Year ending Dec. 15, 1920	*Year ending Dec. 15, 1919*
Balance in general account at opening of fiscal year	$1,054.59	$512.98
Receipts during year	5,090.97	5,467.98
Total available funds	$6,145.56	$5,980.96
* * * * *		
Allocated to Trust Fund (life memberships)	$120.00	$170.00
Bills paid for preceding year	1,275.78	898.90
Disbursements to meet expenses of current year	4,651.51	3,857.47
Total disbursements	$6,047.29	$4,926.37
Balance in general account	$98.27	$1,054.59
Bills remaining to be paid in succeeding year	1,140.00 (est.)	1,275.78
* * * * *		
Trust fund	$832.30	$724.98

It was shown that the association's deficit was caused almost entirely by the increased cost of publishing the REVIEW, and it was reported that the executive council proposed to meet the emergency by a slight temporary reduction in the size of the REVIEW and by inviting members of the association to make a voluntary contribution, in 1921, of one dollar, in addition to the regular dues. The latter stand unchanged at four dollars. It was pointed out that the association's most imperative need is an increased membership, and members of the association were urged to assist in adding new names to the list. It was reported, also, that the executive council had voted that members failing to pay dues should be dropped at the end of two years from the time when payment is due, instead of three years as heretofore.

The treasurer's books were audited by a committee consisting of Professor Charles E. Merriam, of the University of Chicago, and Mr.

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R. S. Childs, of New York City. The committee reported the accounts correct.

Professor J. P. Chamberlain, of Columbia University, delegate of the American Political Science Association in the American Council of Learned Societies, reported to the executive council on the work and plans of the latter organization; and the executive council gave the president of the association continuing authority to appoint two delegates to represent this society in the American Council.

The report of the committee on instruction was formally received, and the association voted to establish a new committee of five—to consist of Professor W. B. Munro and four persons named by him—to continue the work of the former committee, especially with a view to defining "civics," mapping out a desirable course in the subject for secondary schools, and considering ways of establishing such contacts with teachers and educational authorities as will enable the association to exert proper influence in shaping the content and method of secondary instruction in the subject. It was understood that the committee would take steps to put its report before the teaching public at an early date, without waiting for formal action by the association at the 1921 meeting.

Through its chairman, Professor A. N. Holcombe, of Harvard University, a committee recently appointed to consider the establishment at Washington of a special center for advanced study of government reported progress. The committee will continue its work, in conference with other organizations which are interested in similar projects.

Officers of the association for 1921 were elected as follows: president, Leo S. Rowe, director general of the Pan American Union, Washington, D. C.; first vice-president, Harry A. Garfield, president of Williams College; second vice-president, W. F. Willoughby, director of the Institute for Government Research, Washington, D. C.; third vice-president, Thomas R. Powell, professor of constitutional law, Columbia University; secretary-treasurer, Frederic A. Ogg, professor of political science in the University of Wisconsin; members of the executive council for the term ending in December, 1923: Chester Rowell, Fresno, California; Henry W. Temple, Washington, Pa., member of Congress; Charles McCarthy, director of the Wisconsin Legislative Reference Library; Charles G. Haines, professor of government in the University of Texas; and Lindsay Rogers, professor of political science in the University of Virginia.

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On motion of Professor John A. Fairlie, managing editor, the board of editors of THE AMERICAN POLITICAL SCIENCE REVIEW was re-elected for 1921, with the following changes: Professor J. D. Barnett, of the University of Oregon, and Mr. C. C. Williamson, of the New York Public Library, retire, and Professors E. S. Corwin, of Princeton University, and Thomas H. Reed, of the University of California, become new members.

The place of meeting in 1921 was left to the decision of the executive council.

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BOOK REVIEWS

EDITED BY W. B. MUNRO

Harvard University

Government and Politics of France. By EDWARD MCCHESNEY SAIT. (Yonkers-on-Hudson: World Book Company. Pp. xv, 478.)

Contemporary French Politics. By RAYMOND LESLIE BUELL. (New York: D. Appleton and Company. Pp. xxvii, 523.)

The dearth of books in English dealing in an acceptable way with the government and politics of France has been remedied in a notable degree by the almost simultaneous appearance of these two volumes. Each book supplements the other, and the two, taken together, give a full and satisfactory account of the republic's governmental system and of its parties and political issues. Professor Sait's volume belongs to the Government Handbooks series, which already included creditable books on the political systems of the United States, Canada, Germany and Switzerland. With a view to a full and systematic description of the structure and workings of the governmental system with which he deals, the author devotes one chapter to the constitution, eight chapters to executive, legislative, and judicial organization and procedure, one chapter to local government and administration, and two chapters to political parties and electoral activities, including a survey of party history during the past half-century. The method of treatment is conventional, but it is hard to see how it would be improved upon. Careful use has been made, not only of the standard treatises of Esmein, Duguit, Noël, Berthélemy, and Chardon, but of numerous monographs, articles and source materials, and an excellent classified bibliography is presented at the end of the volume. The book is written in a dignified, but vivid, style and is embellished with illustrations in keeping with its general quality.

Mr. Buell's volume deals with other matters, and is of a wholly different character. The author is a young scholar who went to France as a member of the American Expeditionary Force, and who, following

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his period of active service, made a rapid, yet extensive, study of French political ideas and attitudes, drawing his information partly from the press and partly from interviews with representative men of various classes and affiliations. His book treats of three matters chiefly: political parties and how they function in Parliament, current movements for political reform, and French opinion on the peace settlement and the League of Nations. The description of parties is notable mainly for an excellent account of the parliamentary election of 1919; although it may be added that the emphasis laid upon the elements of continuity in party organization will aid in correcting the prevalent notion that there are no true political parties in France. The movements for political reform which receive fullest attention are "regionalism," the representation of professions in political bodies, and the demand for a new constitution doing away with the cabinet system and substituting a government modeled on that of the United States. The discussion of French ideas on the nature of the peace and on the League of Nations traverses ground now generally familiar, although there are some fresh and illuminating citations of opinion as it has found expression in the French press; and a final chapter on the attitude of France toward American "idealism" is an exceptionally clear bit of analysis. The book bears occasional evidence of the author's immaturity, and the proof reading has been poorly done. Taken as a whole, however, the volume is a welcome contribution to the literature of a subject upon which the French have themselves written curiously little.

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University of Wisconsin.

Studies in History and Politics. By the Right Honorable HERBERT FISHER. (Oxford: The Clarendon Press. Pp. 213.)

Of eleven essays presented in this volume, all except one were written before the author entered official life, and all except two were first published in the *Quarterly Review* or other English journals. Half of them are nominal book reviews—in reality, independent discussions suggested by certain books, after the English manner—and in their subjects they range all the way from Ammianus Marcellinus, the last of the Latin historians, to the political writings of Rousseau, Ollivier's memoirs, and the historical work of Lord Acton. The chief characteristics of these papers seem to be philosophic grasp and independence of judgment. The essay on Rousseau, for example, presents a view of the

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French philosopher which is decidedly more favorable than that commonly held in England, where opinion on the subject is still fairly represented by Dr. Johnson's remark, "Rousseau, sir, is a very bad man;" although it should be added that an important corrective of English prejudice was supplied by Mr. C. E. Vaughan's edition of Rousseau's political writings before Mr. Fisher produced his essay. All things considered, the author's critical opinions are most original and judicious, however, when he is dealing with the writings and influence of the philosophic, Liberal, Roman Catholic historian, Lord Acton; and his lament over the vast stores of thought and knowledge which perished with Acton—a man who was inhibited by sheer bulk of knowledge and by scholarly conscience from producing the great works from his own pen which he projected—will be echoed by every historical-minded person.

Among the papers which do not partake of the character of book reviews the most important for the student of political science is one on the subject of administration in the British Empire. Recognizing that the Empire, as such, does not possess an administrative system, the author makes an illuminating comparative survey of the forms of administration prevailing in the several dependencies and lucidly describes the difficulties encountered in organizing and maintaining a civil service in colonies, especially those of a tropical or subtropical nature. In view of the present unrest in India, it is interesting to note the opinion that the inhabitants of a well-governed native Indian state are "on the whole happier and more contented" than the inhabitants of British India proper; and the suggestion follows that the solution of the Indian problem may be found, at least in part, in extending the area of India now governed by this indirect method.

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Political Thought in England from Locke to Bentham. By HAROLD J. LASKI. (New York: Henry Holt and Company; Home University Library of Modern Knowledge. Pp. 323.)

The high level of excellence of the Home University Library generally, and in particular of the two other volumes which deal with the recent history of political thought in England, is fully maintained by Mr. Laski. The book before us with Davidson's *The Utilitarians,* and Barker's *From Herbert Spencer to the Present Day,* certainly constitute the best introduction to the study of the history of English political ideas since the Revolution.

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Mr. Laski's survey begins with Locke and ends with Burke. His studies of these two great figures are very well done. He has related them to their environments; brought out in clear effect the interplay of political facts and political ideas; and illuminatingly analyzed the significance of their contributions for their own and succeeding generations. But it was not to be expected that in such well-tilled fields much new information was to be supplied. It is in the arid and hitherto almost uncultivated region which lies betwixt that Mr. Laski has done his most valuable work. He has here enabled us to better understand the importance in the field of political ideas of such writers as Bolingbroke, Hume, Blackstone, Adam Smith, Price and Priestly, with whom we might have claimed at least a passing acquaintance. But even more important, he has drawn attention to the real significance of a number of other writers hitherto quite obscure, if not unknown, controversialists such as Hickes, Leslie, Shower, Wake, Hoadly, Law and Warburton. It is a period in which political ideas develop through the fermentation of controversies waged by a multitude of minor pamphleteers rather than by the *magna opera* of philosophical writers of the first importance. But political thought germinates and fructifies none the less than in the heroic epochs of Hobbes or Locke.

The age-old problem of the relation of church and state here again holds the center of the stage, and Mr. Laski has pointed the meaning for our own day of such controversies as those connected with the nonjuring schism, the question of the rights and position of convocation, the proposed repeal of the Test Act, and the deist movement. That in all these he finds valuable material for his own conception of a pluralistic state is to be expected.

In truth, this is just such an illuminating, not to say brilliant, little book, studded with forceful epigrams and reflecting a very wide and fruitful reading, as one might expect Mr. Laski to write. Like his previous books, however, it is marred by occasional carelessness of phrase.

WALTER JAMES SHEPARD.

University of Missouri.

American Political Ideals. By CHARLES EDWARD MERRIAM. (New York: The Macmillan Company, 1920. Pp. 481.)

In this work, Professor Merriam continues his study of the development of political thought in this country. In a previous volume he dealt with our political history down to the close of the civil war. The

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present volume covers the period that has elapsed since then down to the entrance of the United States in the war with Germany.

Professor Merriam begins with a chapter on "The Background of American Political Thought" and then proceeds to examine various underlying American political doctrines, for example, the consent of the governed, the system of checks and balances, the responsibility of judges in a democracy and the methods of constitutional change. His discussion does not proceed from one theorist to another, after the fashion of most books on political theories, but from one topic to another. Towards the end of the book there is a comprehensive chapter on "Systematic Studies of Politics" in which the author lists and comments upon the more important books which have been written by American scholars in this field during the past half century.

The most striking feature of the present work is its comprehensiveness. The author's studies have penetrated every field of his subject, and so numerous are his references and citations that they furnish a complete bibliography of the literature of American political thought for the period 1865–1917. Even the poets and novelists are not disregarded, but their contributions to the movements of political thought in this country are noted and appraised.

The purpose of the book is such that the treatment is necessarily descriptive and expository. Hence there is little in the way of valuation. It occurs to one at times to ask just what are democratic principles, just why interpretations of democracy vary so much in time and place, and what is the explanation of the marked difference in the institutional deposits made by the democratic movement in various countries. To such questions Professor Merriam does not attempt to give answers, but he has performed thoroughly and well the task of making an orderly classification of American data, and his work is an indispensable guide to anyone undertaking a systematic consideration of political developments in the United States.

HENRY JONES FORD.

Washington, D. C.

Democracy and Assimilation: The Blending of Immigrant Heritages in America. By JULIUS DRACHSLER. (New York: The Macmillan Company. 1920. Pp. xii, 275.)

The Unfinished Programme of Democracy. By RICHARD ROBERTS. (New York: B. W. Huebsch. 1920. Pp. 326.)

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Steps in the Development of American Democracy. By ANDREW CUNNINGHAM MCLAUGHLIN. (New York: The Abingdon Press, 1920. Pp. 210.)

If, in President Wilson's phrase, the war against Germany was fought "to make the world safe for democracy," a great many writers are now trying to make democracy safe for the individual. A sufficient *raison d'etre*, perhaps, for the three volumes grouped in this notice, is that any serious examination of fundamental political principles is worth while, particularly at this time when the strain of the war and the demands of an increasingly complex society are putting existing institutions to new and very severe tests. But apart from their *raison d'etre* and the word "democracy" in their titles, the three books have nothing in common.

Mr. Drachsler's monograph is a companion volume to *Intermarriage in New York City: A Statistical Study of the Amalgamation of European Peoples*, which appeared recently in the Columbia University Studies. The data there was drawn from 100,000 marriage certificates and covered a five-year period (1908–1912) before the European War. The present book "attempts to supplement the purely objective study of the facts of ethnic fusion by an interpretation of their larger bearing upon public policies of assimilation." If the effects of race assimilation on democracy can only be ascertained by such statistical studies, Mr. Drachsler deserves much credit for his industry and his accuracy. He ventures tentative conclusions on the economic and cultural aspects of immigration, immigrant community life and organization, intermarriage among ethnic groups, and ethnic fusion and public policy.

The spiritual instead of the statistical approach to the problems of democracy is relied upon by Mr. Roberts, a Welsh clergyman. His discussion of the question is a sermon between boards. Many fine things are said which will command cordial agreement, but the specific program is rather vague. The problem is to set "the individual free without opening the door to individualism and anarchy;" this will be accomplished when we take seriously in hand "the task of clothing the political skeleton with a body of living social flesh." The tailor will be the British Labor Party (on the basis of its manifesto, *Labour and the New Social Order*) with assistance from the Guild Socialists and evangelists like Mr. Roberts, preaching that ethics are more important than economics and that the function of politics is to reconcile the two. That is a good text and Mr. Roberts is an eloquent, although somewhat vague, evangelist.

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Professor McLaughlin's lectures delivered on the George Slocum Bennett Foundation at Wesleyan University a year ago, seek to describe certain basic American "doctrines and beliefs, some of which may have had their day, while others have not yet reached fulfillment." Like a great many generalizations on historical facts, Professor McLaughlin's lectures may seem more suggestive than convincing, but it is an excellent thing to have the landmarks in the development of American Democracy charted by such a competent scholar, and published for a larger audience than the students of Wesleyan University.

LINDSAY ROGERS.

Harvard University.

Economic Democracy. By C. H. DOUGLAS. (New York: Harcourt, Brace and Howe. 1920. Pp. 141.)

This volume is one of the many efforts put forth by inquiring minds during these days of reconstruction to diagnose the disease from which economic society seems to be suffering and to propose a remedy. While the book is small the reader will find nothing dwarfed about the ambition or courage of the author in dealing with his problem.

There is at the outset an analysis of the difficulties which at present prevent the realization of a true economic democracy, a democracy which is vastly more important to human welfare than any mere guarantee of political equality. The author believes that the root of the evil lies in the enormous centralization of economic power which has resulted from the modern movement for scientific management and efficiency. This centralization has produced a bureaucratic system in modern industry, under which the personal initiative of the individual has been sacrificed in order to secure perfection in the mechanical processes of production. This has resulted in a diminution of the psychological efficiency of the worker to whom the increased production of machine-made goods has brought some physical comforts but much discontent of mind. The problem of modern economic society is to retain the enormous benefits of mechanism for productive purposes but to secure an effective distribution of the results and restore personal initiative.

For the solution of this problem there is presented a plan for accomplishing the needed economic decentralization. The state and not the capitalist is to be entrusted with the duty of loaning money for purposes of productive industry. Such loans are to be limited to $5000 to any

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one person. Thus the number of persons who can establish and maintain plants will increase and personal initiative in industry will be revived. A scheme of cost accounting is to be installed and by means of it a "just price" for the product is to be determined based upon use-value. Just how this is to be accomplished is a question which will remain somewhat vague in the reader's mind

The author has not succeeded in making his program stand out clearly. He is handicapped by an almost total lack of concreteness in method of presentation and a somewhat confusing use of various technical economic terms. The value of this book lies chiefly in the useful criticisms urged against our present economic system rather than in the proposed plan for reform.

ROBERT EUGENE CUSHMAN.

University of Minnesota.

The History of Cumulative Voting and Minority Representation in Illinois, 1870–1919. By BLAINE F. MOORE, Ph.D. Revised edition. (University of Illinois Studies in the Social Sciences, Vol. 8, No. 2. Pp. 70.)

This is a thoroughly well-made study of one of the very few experiments the American states have undertaken in the structure of representative government. It is just fifty years since Illinois rather courageously recognized that something was wrong with the single member district and plurality election scheme, and adopted for its larger house a device which, roughly speaking, assures the second party in any district one of the three members which the district returns, provided it can muster as much as one-fourth of the vote which the two cast together. In 1920 there met at Springfield a new constitutional convention, the first since 1870, one of whose proposals will pretty surely be the elimination of this device; and if the voters are allowed to act separately on it, as they did in 1870, they will quite surely adopt the recommendation.

Dr. Moore's monograph will make it unnecessary for the future inquirer to look further for the measure of success and failure that has attended Illinois' half-century of experience. After a brief introductory chapter calling attention to the progress of new forms of representation, and another on the circumstances of the adoption of the Illinois system, there follow two chapters of careful statement of the facts of experience, accompanied by five statistical tables. In these the student will find

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digested all that figures can tell about the matter. Next come two chapters in which are discussed the effects of the system on the personnel of the legislature and on party organization, and a final one of summary and conclusions. Here Dr. Moore is conservative, and renders what, on the whole, is a Scotch verdict. That the plan has guaranteed representation to both the leading parties from all parts of the state in pretty much the true total proportions is clearly shown—nor is that a small gain. Illinois has avoided both the sectionalism between the north and the south of the state (which was probably the main purpose in 1870) and the sharp cleavage between a city Democratic and a country Republican party from which New York, for instance, suffers. Along with these, it has much reduced gerrymandering. On the other hand, it has not raised the character of the Illinois legislature above that of other legislatures subjected to similar economic pressure. It has not made it a better picture of the mind of the state. It has (like the three-cornered constituency scheme adopted three years earlier in Great Britain) increased the power of the party machine at the expense of the voter, at least in Chicago; and on this the Chicago critic would be likely to speak much more strongly than Dr. Moore does.

In conclusion, the reader should be reminded that the Illinois plan is not one of proportional representation. It assumes and perpetuates the two-party system, in a time when it has been increasingly evident that the two national parties have no real differences in the state, when the real differences have been between city and country, wet and dry, labor and manufacturers' association. When the time comes for trying to make the structure of our legislatures correspond better to the interests of the people of the state, the teachings of the Illinois experiment will be chiefly negative. That fact does not make Dr. Moore's work any the less valuable.

F. D. BRAMHALL.

University of Chicago.

A New Municipal Program. Edited by C. R. WOODRUFF. (New York: D. Appleton and Company. 1919. Pp. 392.)

For a volume written by a dozen authors *A New Municipal Program* exhibits an unusual degree of unity of purpose and of consistency. The contributors are: M. N. Baker, Richard S. Childs, John A. Fairlie, Mayo Fesler, William Dudley Folke, Augustus Raymond Hatton, Herman G. James, A. Lawrence Lowell, William Bennett Munro,

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Robert Treat Paine, Delos F. Wilcox and Clinton Rogers Woodruff—surely a worthy galaxy. The book is not a compilation of articles previously published; on the contrary its chapters were written specifically for this work, and are directed to the end of elucidating various aspects of a program of constitutional and charter provisions previously agreed upon by the authors acting as a committee of the National Municipal League. Most of the papers are good; some of them are excellent; inevitably, however, where there are so many contributors, there is considerable variation in the matter of interest and of value. It is difficult to measure the influence which was exerted by the first program of the league adopted twenty years ago at Columbus. Since that time there has been in the United States a prodigious growth of interest in, knowledge about, and comment upon, municipal affairs. In view of this fact it will be even more difficult to estimate the results that flow from this later program. Certainly, however, it will be of no small service to those who seek its aid.

It is no criticism of the purpose and accomplishment of this volume to say that the heart of the American municipal problem does not lie wholly, or even chiefly, in such matters as the legal relations between the city and the state or the grant of municipal powers or the organic structure of city government. Important as these are, it is unquestionable that they have been and are being overemphasized. What we really need is not so much a new program as a new attitude of mind and a better understanding of the nature of the forces that must operate our legal programs. With this other and more serious aspect of our city problem this book does not purport to deal, although special mention should doubtless be made of President Lowell's eminently commonsense chapter on experts in municipal government. He recognizes that a combination of expert and lay elements is indispensable in a democratic government such as ours, that these elements are mutually antagonistic and that ultimate power must lie with the elected laymen. The most that a charter can do is to make expertness possible, perhaps even natural. It is a case of relational adjustment that cannot be written into law. He is nevertheless sanguine to believe that the layman lion and the expert lamb can be made to stand up and pull together. They sometimes do, but also they frequently do not.

HOWARD L. MCBAIN.

Columbia University.

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BRIEFER NOTICES

No book is provoking a more animated discussion among students of the social sciences at the present time than H. G. Wells' *Outline of History* (2 vols., Macmillans, pp. 648, 676). The author's task, as he himself sets it, is to tell, "truly and clearly, in one continuous narrative, the whole story of life and mankind so far as it is known today." But while these two volumes are plainly for the general reader rather than for the special student of history, it does not follow that they contain nothing beyond an endless parade of names and dates. Their chief value, indeed, is in the author's interpretation of what he writes about. Events are appraised and men are weighed in the balance as he goes along. Historians in general will not agree with some of these appraisals, nor will they credit Mr. Wells with an approach to infallibility in his judgment of the men who flit across his pages; but his estimates of the relative value of facts and forces can scarcely be brushed aside because they do not command general indorsement. On some matters, unhappily, Mr. Wells has allowed his iconoclastic proclivities to run away with him. Napoleon I, for example, cannot be disposed of as a second-grade "pestilence" because "he killed fewer people than the influenza epidemic of 1918" (II, p. 384); nor will the world believe, so long as it retains its senses, that Napoleon III was "a much more intelligent man" than his uncle (II, p. 438). Even the pinchbeck himself would have rebuked this insinuation. But when all is said, these two stout volumes embody a remarkable achievement. They contain astonishingly few historical inaccuracies of the customary type. The author's advisers, and a competent galaxy of scholars they are, have kept him clear of the pitfalls. The style is terse and forceful. Mr. Wells certainly has the gift of cogent exposition. Where, for example, can anyone find all pre-human history so vividly and clearly summarized as in the first seventy-five pages of this *Outline*? Nor is the author balked by the growing complexity of things after man appeared on this earth. His *coup d'oeil* over the whole range of human history from Adam and Eve to Harding and Coolidge is an astonishing success in point of clear delineation. It might better have borne the title "A Socialist's Interpretation of World History," however, for that is what it really is. The events are merely so many pegs on which to hang the eternal moral.

General Ludendorff continues his contributions to the history of the World War, from the German standpoint, by the publication of *The*

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General Staff and its Problems (2 vols. E. P. Dutton & Co., pp. 721). The present work is not a narrative, like the author's *War Memories*, but a documentary history of the great conflict in its later stages. A preliminary chapter deals with the development of the German army and German war plans prior to 1914, and there are some rare admissions of German "preparedness" in these pages. The violation of Belgium's neutrality was completely planned, as the documents show, nearly two years before the war began. England's intervention was counted upon. A memorandum of December, 1912, signed by Von Moltke, then Chief of Staff, contains the following significant passage: "If we are to take the offensive against France, it would be necessary to violate the neutrality of Belgium. It is only by an advance across Belgian territory that we can hope to attack and defeat the French army in the open field. On this route we shall meet the English Expeditionary Force and—unless we succeed in coming to some arrangement with Belgium—the Belgian army as well. At the same time this operation is more promising than a frontal attack on the French fortified eastern frontier" (I, pp. 61–62).

The confidential letters, memoranda, and telegrams which passed between Main Headquarters, the Chancellor, and the Emperor are reprinted in all their nakedness, with explanatory footnotes and some running comment. For American students the documents relating to the unrestricted submarine campaign and the negotiations which preceded the armistice afford intensely live reading. They show that all was never serene below the surface. The military and political branches of the governments did not pull very well together. It is often said that the German general staff underestimated the part which an American army could play in the war, but broadly speaking this is not true. The documents prove that Ludendorff was well aware of America's resources, but he relied upon the admiralty's assurance that the transport of troops could be hindered and also upon the assurance of shipping experts that tonnage for the transportation of a large army was not available. Germany seems to have been well supplied with inaccurate statisticians and false prophets during these fateful years. The documents show that they went as far wide of the mark on foodstuffs as on submarines. Wilson's first notes in reply to the German requests for an armistice were thought by many in this country to be unduly lenient in their tone, but they came like quick thunderclaps to the masses of the German people. The intimation that no armistice could be considered unless it contained absolute guarantees for main-

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taining "the present military supremacy" of the Allies was an eye-opener to those millions of simple folk from whom the truth had been hidden.

The condition of affairs in Germany during the war years, the squabbles over franchise reform, the financial difficulties, the ministerial crises and the growing obstreperousness of the Reichstag, are all accurately portrayed in these documents. As sources for the study of the real situation they are far more valuable than any man's memoirs or narrative, for they were written with no thought that they would ever reach the eyes of the world. Had Germany won the war, they would never have found their way into print. Ths history of a great nation's *débâcle* is here for those who can read between the lines.

Those who desire to know something about the inner maneuverings of British politics during the war years will find much to interest them in Colonel Repington's *First World War, 1914–1918* (2 vols., Houghton Mifflin Co., pp. xvii, 621, xiii, 581). The author, as is well known, served during the earlier years of the war as military critic of the London *Times*. His articles in that publication commanded wide attention, not only in England but on the Continent. He had unusually prolific and dependable sources of information, all of which he used to the full. His disclosures on more than one occasion brought important political events in their train. The present volumes, however, contain Colonel Repington's diary, not his war correspondence. Day by day he jotted down what happened, whether at the front or at home, and added his own comment or criticism. He lunched and dined everywhere and with everybody, always keeping his ears wide open. What a rare relish for every type of gossip this soldier-journalist and man-about-town possessed! Events which literally rocked the world rub shoulders in his diary with the small-talk of Mayfair drawing-rooms. Yet it is all live, spirited narrative and intensely interesting throughout, although the American reader would fain have been spared the daily recital of what the author ate, and where, and with whom. These gastronomic details are the only wearisome things in the book. Colonel Repington took no attitude of cold neutrality towards the political shufflings which went on at Westminster. He was a hot partisan. Kitchener, accordingly, fares badly at his hands and so do some others in high places. Taking it all in all, the Pepysian scope and quality of Colonel Repington's volumes should assure them a wide circle of readers. They will interest the politician not less than the soldier.

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Some half dozen or more volumes relating to various aspects of the labor problem deserve mention in this REVIEW because they deal, in part at any rate, with matters of current political controversy. *Labor in Politics*, by Charles Norman Fay (pp. 284) is printed at the University Press, Cambridge, Mass. It is an endeavor to show the various methods by which class legislation is promoted in the United States. *Labor Problems and Labor Administration in the United States during the World War*, by Gordon S. Watkins, is published by the University of Illinois (2 vols., pp. 117, 247). The aim of the study is to present statistical and descriptive information concerning the numerous labor problems which arose in the United States during the World War and to outline the ways in which these problems were handled. The first volume is devoted to an enumeration and analysis of the difficulties; the second deals with the development of war labor administration. Both these divisions of the subject are treated in a comprehensive, accurate and interesting way. The work is a valuable contribution to the literature of federal administration in war time. *Labor's Crisis*, by Sigmund Mendelsohn (Macmillans, pp. 171) deals with the question of labor reform from the employer's standpoint. The author sets forth and analyzes the various suggestions made by labor leaders to remedy the present unrest. His discussion of the matter is not violently partisan; on the contrary it discloses a readiness to appreciate labor's point of view. Arthur Gleason's *What the Workers Want* (Harcourt, Brace and Howe, pp. 518) is an exhaustive study of British labor organization, its leaders, problems, methods and aims. Although himself an American, the author has devoted several years to the special study of economic and political conditions in Great Britain. His aim is to tell what the workers want, as judged by their own statements, not what the author or anyone else thinks they ought to want. From this point of view the book is interesting and important. The old industrial system in Britain, according to Mr. Gleason, was killed by the war. Something altogether different is being put in its place by a "gentle revolution of the good-humored British brand." Other countries, he believes, will copy the new industrial order as they have copied so many British institutions in the past.

The Frontier of Control, by Carter L. Goodrich (Harcourt, Brace and Howe, pp. 277) is a study which runs close to the main line of Mr. Gleason's book. Neither the employers nor the workers, the author points out, are in complete control of British industry today.

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There is a No Man's Land in which the supremacy of neither is as yet finally determined. From the worker's side the frontier is being pushed forward and the question arises how far it will go. This is the main theme of Mr. Goodrich's book. The matter is one which has an obvious bearing upon future British politics. C. R. Fay's *Life and Labor in the Nineteenth Century* (Cambridge University Press, pp. 312) contains the substance of lectures delivered at Cambridge University in 1919 to special students of economics, among them many officers of the American Expeditionary Force. The volume embodies the fruits of much scholarly research; it is not a sketchy or superficial outline of the subject. There are excellent chapters on "The Influence of Bentham," "Chartism" and "The Revival of Socialism."

Under the title *The Frontier in American History* Professor Frederick J. Turner has brought together a series of thirteen essays written at various times and published in various places during the past two decades (Henry Holt & Co., pp. 375). The essays deal with a variety of topics, but they all radiate from a common center, which is the viewpoint of a scholar who looks upon western expansion as affording a key to the correct interpretation of political, social and economic history in the United States. Earlier historians and political scientists overlooked the profound importance of the frontier as a factor in the life of a growing nation; Professor Turner is rather in danger of over-stressing it. One of the essays in this volume may be particularly commended to students of American government as a clear and forceful presentation of a very important matter. It is entitled "Contributions of the West to American Democracy," and first appeared in the *Atlantic Monthly* seventeen years ago. The younger generation of American scholars may be in danger of forgetting the influence which the crude but red-blooded democracy of the expanding West exerted on the national life. Its backwash was felt even in the states which fringe the Atlantic seaboard. Professor Turner has done well to call attention anew to this important aspect of American political evolution.

Three new editions which have recently come from the press of the Macmillan Company are of marked interest to teachers and students of political science. Frederic A. Ogg's *Governments of Europe*, (pp. 775), which was first published in 1913, has been issued in completely revised form. A number of chapters dealing with the minor states of Europe have been dropped; on the other hand a much larger amount of space

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has been devoted to the governments of Great Britain and France. The new German government is adequately described and a chapter on Soviet Russia is added. Hence the book has been substantially rewritten and is not merely a "revised edition" in the usual sense. A good book at the outset, it has now been greatly improved. Charles A. Beard's *American Government and Politics* (pp. 788) has been issued in a third edition. The general plan of the book has undergone no change but many details have been omitted and the governmental changes of the past few years have been incorporated. Arthur Lyon Cross has condensed his well-known volume on English history into a *Shorter History of England and Great Britain* (pp. 942). Chapters have been added to cover British participation in the World War. The curtailment has been largely in the political narrative; the excellent discussions of social, industrial, intellectual and religious movements are retained substantially as they appear in the author's larger work.

In spite of the implications of its title, John M. Mecklin's *Introduction to Social Ethics* (Harcourt, Brace & Howe, pp. 446) contains much material of direct interest to students of political theory and governmental reform. Chapter 2, which deals with American Calvinism and the religious background of our institutions, is especially worthy of the political scientist's attention. It is a highly suggestive argument, and some points in it are worthy of more extended discussion. But the author's omission to make mention of the notable article on the political theories of Calvinism which his colleague, Herbert D. Foster, contributed to the *American Historical Review* four years ago (Vol. 21, pp. 481–503), is somewhat surprising. Other things of considerably inferior value find a place in his bibliographical list. Professor Mecklin is not exactly at home, moreover, in dealing with that hackneyed topic "The Problem of the City." The chief conclusion one draws from his chapter on this subject is that there is no royal road to a mastery of the problem, even for a philosopher. Quotations from books published a dozen or fifteen years ago are dragged in as though they were fully applicable to municipal conditions of today. If the author has carried his study of municipal government beyond the college text-book stage, his discussion of suggested solutions for the problem of the city gives no evidence of it.

Two recent books deal with the closing era of Russian autocracy. Isaac Don Levine's *Letters from the Kaiser to the Czar* (Frederick A.

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Stokes Co., pp. 264) is one of them. These letters should not be confused with the so-called "Willy-Nicky" correspondence which consisted of telegrams exchanged between Berlin and Petrograd in the years 1904–1907. The present volume contains letters covering a period of twenty years, 1894–1914, which have not previously been published. They throw a flood of light upon Russo-German relations and demonstrate the persistent efforts made by the Kaiser to break down the solidarity of the Entente during the years prior to the war. No student of the recent period in European diplomacy can disregard this correspondence. The *Last Days of the Romanovs*, by George Gustav Telberg and Robert Wilton (Geo. H. Doran Co., pp. 428) contains a full and reliable narrative of what happened to the Russian imperial family from the abdication of the Tsar to the date of their final martyrdom. This narrative is accompanied by full transcripts of the testimony given by sworn witnesses (some of them eye-witnesses) at the investigation which the Kolchak government conducted during its short régime in Siberia. Being based upon documents and sworn testimony as well as personal enquiry this narrative is probably as close to the actual facts as the mysteries of the whole dramatic episode will ever permit. The authors believe that the German imperial government was not without direct responsibility for the affair.

The organization and work of the American Expeditionary Force during the years 1917–1918 are likely to be the theme of many books in days still to come. Two volumes which have appeared in this field during recent months are worth a place on the library shelves. *The History of the A. E. F.* by Captain Shipley Thomas (Geo. H. Doran Co., pp. 540) is as complete and detailed a story of America's military effort as the limits of a single volume would allow. It begins with Pershing's arrival in France and ends with the armistice. Additional chapters deal with the special aims of the service and the organization of supply. A most useful feature of the book is a brief history of each of the forty-three American divisions which went overseas. The concluding chapter indicates all the places of historical interest on the western front and many excellent maps are included in the volume. *The Army of 1918* by Colonel Robert R. McCormick (Harcourt, Brace and Howe, pp. 276) is a briefer work of more restricted scope. Its aim is to show in a general way how the army was recruited, trained and used. The narrative is a combination of history, personal experience, and critical observation. Technical operations are not discussed in detail

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but many important questions of general military policy such as the relations of the regular army to the national guard and the future organization of our armed forces are handled in an open-minded and suggestive way.

The Clarendon Press has just published with some additional chapters, a translation of H. Vander Linden's *Vue générale de l'histoire de Belgique*. The English title is *Belgium—The Making of a Nation* (pp. 356). Beginning with the wars of Caesar's time the author carries the history of his country through mediaeval mist and legend to the modern age. Ernest Lavisse once testified that he knew no land with more glorious memories than Belgium. The glories of the little kingdom have been enhanced during the past half dozen years but M. Linden says nothing about this latest era. His books ends on the eve of the German invasion of 1914.

The Political Philosophy of Robert M. LaFollette (pp. 426) is a title which requires no elucidation. Compiled by Ellen Torelle, and published by the author himself, it contains extracts from the Wisconsin senator's speeches and writings on primary elections, taxation, railroad regulation, the initiative, referendum and recall, militarism, freedom of speech, equal suffrage and what not—a veritable encyclopedia of advanced political and economic doctrine, although much of it can hardly be termed "philosophy." The standpoint is one with which students of political science may not agree, but it is one which they cannot afford to ignore.

Selections from lectures which were delivered to various units of the American Army of Occupation in Germany during the early summer of 1919 by J. Travis Mills have been printed by the Oxford Press under the title *Great Britain and the United States—A Critical Survey of their Historical Relations* (pp. 68). The author explains that his lectures are not "propaganda" save insofar as the presentation of truth in place of prejudice may be called by that name. His review of Anglo-American relations, though necessarily condensed, is well put together and discloses no unreasonable bias.

The Carnegie Endowment for International Peace, through its Division of Intercourse and Education, has recently published a compilation of material on *American Foreign Policy* (pp. 128), being the statements

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of various presidents, secretaries of state and other publicists, with an introduction by Nicholas Murray Butler. It has also printed a small volume on *The Project of a Permanent Court of International Justice and Resolutions of the Advisory Committee of Jurists* (pp. 235), edited by James Brown Scott.

The dean of American biographers, William Roscoe Thayer, has recently published *The Art of Biography*, a small volume of lectures delivered at the University of Virginia (Scribner's, pp. 154). The lectures deal with the biographers of antiquity, the middle ages and the modern era, the essential features of the art in each period being set forth and contrasted. A bibliography of outstanding biographies in all ages is appended. The reader with a taste for biographical literature will be interested in Mr. Thayer's selections.

A Life of Arthur James Balfour, by E. T. Raymond, better known as the author of "Uncensored Celebrities" has come from the press of Little, Brown & Co. (pp. 289). The book does not confine itself to Mr. Balfour alone, although his career supplies the main thread. The other leading English statesmen of the day slip in and out of its pages. All of them provide material for the author's facile and trenchant pen. The reader will find Mr. Balfour to be a rather more interesting personality than most of his fellowcountrymen have suspected.

A brief biography of *Theodore Roosevelt* by Edmund Lester Pearson (Macmillans, pp. 159) will appeal to many readers because it presents within reasonable compass and in a simple style, the life-story of a remarkable man. The book has been compiled from accessible sources and contains nothing that is new, but it will make a strong appeal to young readers by reason of its compact substance and clear narration.

Laurier et son Temps, being a life of Canada's former prime minister, by Alfred D. De Celles, is published by the *Librarie Beauchemin*, Montreal (pp. 228). It is a compact and well-written biography by one whose knowledge of Canadian political affairs during the past forty years gives him claim to write with authority on any phase of this subject.

The Century Company has brought out S. E. Forman's *American Democracy* (pp. 474), which is intended to serve as a text in govern-

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ment in high schools, academies and normal schools. It is based upon an earlier work by the same author (Forman's *Advanced Civics*) but the changes are many and substantial. The present volume provides a text which those teachers who wish to place stress on the governmental aspects of national and community life will find worth their consideration.

Guiding Principles for American Voters, by Augustus Lynch Mason (Bobbs, Merrill Co., pp. 287) is devoted to a lucid explanation of many questions of the day. It discusses such topics as inflation, high prices, women in politics, novelties in government, the league of nations, government ownership and political parties, The pros and cons are set forth liberally but the author does not hesitate to give his own straight-from-the-shoulder opinions as well. It is a timely and interesting little book although it does not take the reader far below the surface of things.

In 1915 the United States Bureau of Education issued a bulletin on the teaching of community civics (Bulletin No. 23). Following the analysis of the subject set forth in this bulletin, Samuel H. Ziegler and Helen Jaquette have prepared an elementary text entitled *Our Community* (John C. Winston Co., pp. 240). The book will be useful to those teachers of civics who desire emphasis on such matters as public health, recreation, charities, civic beauty and the like. It is a significant indication of the present drift of things that only twelve pages are devoted to the organization and work of the national government.

In *The Passing of the New Freedom* (George H. Doran Co., pp. 169) James M. Beck discusses the evolution of President Wilson's political doctrines, and the application of these doctrines both at home and abroad. The book is a combination of pointed argument and keen satire. The discussion of "The Old Freedom" is one of the best short expositions of its sort. Two chapters of the book take the form of imaginary dialogues, and enable Mr. Beck to prove that this method of presentation can be very effectively used in political literature.

Messrs. Harper & Bros. have performed a useful service to students of American political development by making available, in a single volume, the series of excellent maps which were scattered through the twenty-eight volumes of the American Nation Series. Published under the title *Harper's Atlas of American History*, this volume contains one

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hundred and twenty-eight maps, together with nearly one hundred pages of "Map Studies" prepared by Professor Dixon R. Fox of Columbia University. Both the maps and the studies cover every phase of American history and in every case the data has been brought down to 1920. The atlas is a welcome addition to the apparatus available for college teaching.

One of the best known books of our time in the field of social sciences is *Industrial Democracy*, by Sidney and Beatrice Webb. First published more than twenty years ago it still retains its unquestioned value as an authoritative treatise on British labor organization. A new edition (Longmans, Green & Co., pp. xxxix, 899) is now the publishers' response to a continued and ever-increasing demand for the book. In an introduction the authors point out the more important changes which have taken place in trade unionism during recent years.

A well-written and illuminating essay on *The American Supreme Court as an International Tribunal* by Herbert A. Smith, professor of jurisprudence and common law at McGill University has been brought out by the Oxford University Press (pp. 123). The essay aims to give, in brief compass, a reasoned summary of all the interstate cases which have been decided by the Supreme Court. It makes a useful companion to Dr. James Brown Scott's well-known compilation of these cases.

An anonymous volume entitled *The Sovereign Citizen* has been prepared by the Periodical Publishers' Service Bureau, New York City, (pp. 183) with the intention of stimulating the study of politics throughout the country by "Sound Administration Clubs." The book contains six chapters, all of which are devoted to the discussion of political parties, their functions, organization and activities.

Joseph K. Hart's *Community Organization* (Macmillans, pp. 230) is the outgrowth of the author's long experience in social and educational work. It deals particularly with the fundamentals of community organization for social work, giving relatively little attention to the political aspects of community planning.

The Russell Sage Foundation has issued a monograph on *Travelling Publicity Campaigns* by Mary Swain Routzahn (pp. 151). The book

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contains an interesting account of some one hundred and thirty educational tours by train, trolley car, truck, motor car, wagon and boat, all of them undertaken to afford publicity to some worthy cause.

Professor John H. Wigmore of the Northwestern University Law School has recently published in a small volume entitled *Problems of Law*, (Scribners, pp. 136) a series of three lectures delivered last year at the University of Virginia. Two of the lectures deal with the evolution and mechanism of the law, the third with world-legislation and America's share therein.

An interesting volume by David Friday on *Profits, Wages and Prices*, (N. Y.: Harcourt, Brace and Howe, pp. 252) endeavors to explain who made the money that was made in the United States during the war. It also attempts a vindication of the excess profits tax from the standpoint of its economic soundness. But when the author pleads for government insurance of business profits, we suspect that business men and economists will join hands in opposition to the proposal. For the political scientists the administrative difficulties of such an undertaking are alone enough to condemn it.

Among recently published small volumes on various subjects which will doubtless interest some readers of the REVIEW but for which the limitations of space preclude any extended notice, the following may be mentioned: J. A. Hobson, *The Morals of Economic Internationalism* (Houghton, Mifflin Co., pp. 69); Arthur Sweetser, *The League of Nations at Work* (Macmillans, pp. 215); H. Vast, *Little History of the Great War*, translated by Raymond Weeks (Henry Holt & Co., pp. 262); R. H. Tawney, *The Acquisitive Society* (Harcourt, Brace and Howe, pp. 188); and Frank Edgar Melvin, *Napoleon's Navigation System* (D. Appleton & Co., pp. 449).

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RECENT PUBLICATIONS OF POLITICAL INTEREST

BOOKS AND PERIODICALS

CLARENCE A. BERDAHL

AMERICAN GOVERNMENT AND PUBLIC LAW

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Babson, Roger W. Cox—the man. Pp. 128. N. Y., Brentano's.

Bartlett, William H. Handbook of American government. Revised and enlarged by Henry Campbell Black. Pp. viii+162. N. Y., Thomas Y. Crowell Co.

Beck, James M. The passing of the new freedom. Pp. xi+169. N. Y., George H. Doran.

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